Apparently not reported, up to 15 U.S.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~381~~. 68

THE NEW ORLEANS WATER WORKS COMPANY, APPELLANT,

vs.

THE MAGINNIS OIL AND SOAP WORKS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED AUGUST 3, 1888.

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No. 391.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

NEW ORLEANS WATER WORKS CO., Appellant,
vs.
MAGINNIS OIL & SOAP WORKS, Appellee. } No. 11565.

J. R. Beckwith, Esquire, for appellant.
W. S. Benedict, Esquire, for appellee.

Transcript of Appeal.

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1888.

1 Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY
versus
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

Bill of Complaint. Filed April 23, 1887.

THE UNITED STATES OF AMERICA, *Eastern District of Louisiana*, } *ss*:

To the honorable the judges of the circuit court of the United States in and for the fifth judicial circuit and eastern district of Louisiana:

The New Orleans Water Works Company, a corporation duly created under and by virtue of the laws of the State of Louisiana, domiciled in the Parish of Orleans in said State, brings this its bill of complaint against the Maginnis Oil and Soap Works, a corporation duly created under and by authority of the laws of Louisiana, having its domicil in the city of New Orleans, in the eastern district of Louisiana.

2 And thereupon, your orators show unto your honors, that the legislature of the state of Louisiana, by an act thereof, approved on the first day of April, A. D. 1833, created and established a corporation called the Commercial Bank of New Orleans; that the chief object and purpose of said organized corporation was to convey water and water supply into the city of New Orleans and the faubourgs, and into the homes of the inhabitants thereof; and to accomplish and effect a public water supply for the inhabitants of said city; that in and by said act of the legislature aforesaid, it was enacted that the said Commercial Bank of New Orleans should have a capital stock of three millions of dollars, to be subscribed for as provided for in said act; and that the said corporation should

erect and establish a system of public water works in the city of New Orleans, adequate for a sufficient water supply for said city, and the inhabitants thereof, as provided in said act.

It is also enacted therein, that said Commercial Bank of New Orleans should have and possess the exclusive privilege of furnishing said water supply, erecting said water works and laying pipes and mains for said supply, from and after the passage of said act, the water to be taken or drawn from the Mississippi river by means of pipes or conduits, and said corporation was vested with power to lay down pipes and erect the works necessary to effect said purpose, subject to the restrictions and the conditions contained in the said act of the legislature; and it was in said act further provided, that if at any time after the expiration of thirty-five years from the date of the passage of said act the corporation of the city of New Orleans, should so select, the said corporation, the city of New Orleans was authorized to purchase from said Commercial Bank of New Orleans the water works so had and so constructed by the said company, together with all the rights and franchises pertaining to the same, including said exclusive right aforesaid;

3 that it was further provided in said act of the legislature that in the event the said city of New Orleans, after the expiration of said thirty-five years, should elect to purchase said water works from the said Commercial Bank of New Orleans, the price to be paid therefor by the city of New Orleans should be fixed by arbitration, as provided in said act, and the amount so fixed should be payable to the said Commercial Bank of New Orleans in the bonds of the mayor, aldermen and inhabitants of the city of New Orleans, bearing interest at the rate of five per cent. per annum, payable semi-annually and redeemable in not less than ten years from the date on which the said award should be signed; and the said water works, its machinery, pipes and plant delivered over to the said city of New Orleans, as more fully and at large appears by said act of the legislature of said state, to which your orator at all times refers.

2. And your orator further shows unto your honors, that after the passage and adoption of the said act of the legislature, the capital stock required, as provided in said act, was duly subscribed, and said company was organized and accepted the terms of the said act of legislature, and constructed an elaborate system of water works in the city of New Orleans, as provided, directed and required by the said act of legislature, and continued to own, manage, control and operate the same for the full period of thirty-five years from and after the adoption of the said act of legislature; and during the entire period aforesaid, had and possessed, under and by virtue of the terms of said grant and act of legislature, including the right and privilege of managing and operating the said public water works for providing the supply of water to the city of New Orleans and the inhabitants thereof.

3. And your orator further shows unto your honors that at the expiration of the said period of thirty-five years, the corporation of the city of New Orleans elected to take advantage of the provisions

of said act, wherein and whereby it was permitted to purchase
4 said rights of the said Commercial Bank of New Orleans, in said Water Works, and everything relating thereto; that appraisers were appointed and the valuation of the property arrived at, as required in said act, and was by arbitration established at the sum of two million dollars; that at that time, as organized under said act of legislature, the city of New Orleans was a large shareholder in the said Commercial Bank of New Orleans, and in order to pay for said Water Works, acquired the interest of the other shareholders therein by purchase, and to that end, issued and delivered to the said Commercial Bank of New Orleans, the bonds of the city of New Orleans in due form duly issued, as provided in said act of legislature, in the sum of one million three hundred and ninety-three thousand and four hundred dollars ($1,393,400) for the appraised and estimated value of the interest in said Commercial Bank and Water Works not at that time owned by the city of New Orleans and represented by the shares of stock in said corporation, standing in her name; that said bonds were made redeemable in forty years from the date thereof, and bore five per cent. interest per annum, payable semi-annually; that said bonds are commonly known as the Water Works bonds. Whereupon the said Commercial Bank of the city of New Orleans, as required by said act of legislature, conveyed and transferred to the city of New Orleans, full, absolute and complete title in and to said Water Works, and of all rights, privileges and immunities which were possessed by said Commercial Bank of New Orleans, whereby the city of New Orleans became and was vested with the exclusive right and privilege of furnishing water by a system of public Water Works to the public and inhabitants of said city of New Orleans; that said right was an exclusive right, without limit as to time, and in the language of the said act, was to continue "forever."

4. And your orator further shows unto your honors, that having so become possessed of said Water Works by the title aforesaid, the said city of New Orleans, as a corporation, managed,
5 conducted, and held exacting pay from those receiving water supply therefrom, until in or about the month of February, A. D. 1878, as hereinafter set forth.

5. And your orator further shows your honors, that during the period of time which the said city of New Orleans owned and operated in the said Water Works, said corporation was much embarrassed in its finances, and was largely in debt; that it was with extreme difficulty that the said corporation could meet and pay the usual demands of interest on said bonds, and its other current expenses; that in the year A. D. 1877, in order to relieve the said city of New Orleans in a measure from its financial embarrassment, growing out of its said indebtedness, the legislature of Louisiana, at an extra session of the legislature thereof, held in 1877, passed and adopted act No. 33 of the acts of said extra session, entitled "An act to enable the city of New Orleans to promote the public health and to afford greater security against fire by the establishment of a corporation to be called the New Orleans Water Works Company (your

orator), to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of the city of New Orleans an adequate supply of pure and wholesome water; and to permit holders of the Water Works bonds to convert them into stock and to provide for the liquidation of the bonded and floating debt of the city of New Orleans, etc.," to which said act, as published by authority in the public statutes of the said state, your orator at all times refers and makes the same a part of its bill of complaint, to the same extent and effect as if written here in *extenso*.

6. And your orator further shows unto your honors, that it was provided in said act, that a corporation be created to be known as the New Orleans Water Works Company and provided amongst other things that the holders of the said water works bonds
6 might convert the same into the capital stock of the said company, and that when so converted the said bonds should be surrendered and cancelled; that there should be issued to the city of New Orleans, stock amounting to six hundred and six thousand and six hundred dollars, ($606,600) full paid shares of stock in said company of one hundred dollars each, besides one additional share of stock for every one hundred dollars of the said water works bonds which she had redeemed and possessed herself of, prior to the time of the organization of said company, whether taken up either by payments, funding into premium bonds, or other securities, or otherwise; and that for the purpose of carrying out the provisions of said acts, all the certificates of all the stock in said company, should be issued to the City of New Orleans, one set of certificates equal in value and amount to the then outstanding par value amount of the said water works bonds then held by the said city, to be exchanged for the said bonds with the holders thereof; the other set of certificates being held by the said City of New Orleans, in her own right, and in trust for the holders of all other bonds and floating indebtedness of every kind and nature, who might desire to avail themselves thereof in the manner hereinafter set forth. And it was also further provided in said act, that said Water Works Company should be organized by the Mayor of the City of New Orleans, giving thirty days' notice that he would receive the subscription of bondholders, who might agree to exchange the said bonds for the stock in said Water Works Company, and that the city should subscribe to said stock to the amount of six hundred and six thousand and six hundred dollars, ($606,600) and such other amount, and should be equal in par value to any of the said water works bonds which should have been extinguished by the said City of New Orleans by exchange, payment or otherwise, and that as soon as the sum of five hundred thousand dollars in addition to said subscription to be made by the city should have been made, and the amount of bonds represented thereby, and exchanged therefor should
7 have been surrendered and cancelled by the Administrator of Finance, the said subscribers should assemble on a day to be named by the Mayor of the City of New Orleans, and elect a board of directors to be composed of seven persons, of whom the mayor

was designated as one, and that of the remaining directors, four should be designated by the mayor, by appointment, and three to be selected by the subscribers, other than the said city of New Orleans to be selected from amongst the subscribers, and that the directors thus designated and elected, should constitute the first board of directors of the said company.

7. And your orator further shows unto your honors that the city of New Orleans accepted the conditions and provisions of the said act of legislature, and subscribed for the full amount of said shares of stock to be subscribed for by the said city, and that the holders of the said water works bonds subscribed, also to the said capital stock of the said company, in a sum exceeding five hundred thousand dollars, and as required, surrendered their bonds, being the water works bonds aforesaid, to the Administrator of Finance, on or about the tenth day of March, A. D., 1878, which said bonds so subscribed and surrendered as aforesaid, were by the said Administrator of Finance of the city of New Orleans, duly cancelled and extinguished, leaving to the subscribers who had surrendered the same, only their stock subscription, and the stock represented thereby in lieu and place of the bonds so subscribed and surrendered by them. That immediately thereafter, during the said month of March, 1878, the said company was duly organized, and upon due and proper notice and proceedings had, a board of directors as provided for in said act of legislature, duly appointed and elected as provided for in said act; that when said company was organized as aforesaid, it at once agreed to, and accepted all of the conditions of the said act of legislature as originally adopted by the said legislature, and as amended by an act entitled "an act relative to the charter of the New Orleans
8 Water Works Company, and amending act No. 33 of the extra session of 1877, approved March 31st, 1877" which said last mentioned act was approved on the 26th day of February, A. D., 1878, whereby your orator became, and was vested with corporate character and existence, and vested with all the rights and privileges granted under said act No. 33 of the extra session of 1877, and the said act amendatory thereof, and the said city of New Orleans having also as aforesaid, accepted the terms and conditions of the said act, did, as provided for in the said act, immediately after the appointment and election of the said board of directors as aforesaid, in, and by notarial act in due form, transfer, set over and grant unto your orator all of its rights, title and interest in and to said water works, as it had acquired the same from the said Commercial Bank of New Orleans, and all subsequent additions thereto, together with the exclusive right and privilege to provide and furnish the public water supply of the city of New Orleans, acquired from said Commercial Bank, which said notarial act or a copy thereof, duly attested, your orator has now here in court, ready to submit to the court, as the court shall direct.

8. And your orator further shows unto your honors, that in, and by an act of conveyance, assignment and transfer of said water works, and the rights thereto pertaining so made and conveyed to your orator as aforesaid, by the city of New Orleans, the said city of New Or-

leans as grantor therein in said transfer, conveyed the same to your orator with full and explicit warranty in all particulars.

9. And your orator further shows unto your honors that by reason of the premises, your orator became and was vested with full, absolute and complete title to all the said water works, and to all privileges acquired by the said city of New Orleans, from the said Commercial Bank of New Orleans as aforesaid, and all the rights, privileges and property of the said city of New Orleans, in and to
9 said water works, as the said city possessed and held the same, prior to said last mentioned alienation and transfer, and has had the exclusive right of supplying said city of New Orleans and its inhabitants from the Mississippi river, or any other stream or river by means of pipes or conduits, and the right of erecting and constructing all necessary works, engines and machinery for that purpose for the full period of fifty years, from and after the said thirty-first day of March, A. D., 1877, the date of said transfer of said water works to your orator.

10. And your orator further shows unto your honors, that among the other rights granted and conferred upon your orator by said act of legislature, was the right and power to increase the capital stock of said corporation, and particularly to borrow money for the purpose of improving and enlarging said works, and increasing the supply of water to be furnished the said city of New Orleans: that the entire capital stock of said corporation having been made up and purchased with the obligations of the city of New Orleans so delivered to said city of New Orleans in payment of said subscription, there was left to your orator no fund or capital stock in its treasury wherewith to pay and discharge the expenses necessarily involved in extending, repairing and operating said system of public water supply; that in order to accomplish this end, your orator was authorized to issue bonds of the company to an amount not exceeding two millions of dollars, in such sums and at such times and bearing such rate of interest as the Board of Directors of your orator might determine or deem most expedient to accomplish said end; and your orator was authorized to secure the payment of the said bonds, principal and interest, by a mortgage bearing on all the property and franchises of said New Orleans Water Works Company, including its franchises to be a corporation, and its right to the exclusive water supply of said city; and all of the property possessed and held, owned or acquired by your orator, subject to the condition, that no such bond or mortgage shall be given or
10 issued without the consent of the council of the city of New Orleans, and that the said bonds should not be sold or disposed of except upon such terms as shall be approved by said council or legislative body of the city of New Orleans.

11. And your orator further shows unto your honors, that in order to render said works adequate to sufficiently supply the said inhabitants of said city with water, and to repair the same, and to extend the works and renew old and decayed pipe and replace the same, and to extend the facilities of your orator for supplying water to said city, and in order to carry out the obligations and conditions

bearing upon it in the said act of incorporation under which your orator has its existence, it became and was immediately necessary to expend large sums of money which your orator was compelled necessarily to raise, or procure by loans, and that your orator, by and with the consent of the city of New Orleans, has made and issued five hundred thousand dollars of bonds of said company, and has disposed of over three hundred thousand of that amount and has realized the money therefrom; and all this was done by and with the consent of the city of New Orleans and the council and legislative department thereof, and that your orator has expended the said money or a large portion thereof, in increasing, improving, and enlarging the said Water Works in order to render the same adequate to supply the demand for water, and to carry out and observe the provisions and requirements of the said act of legislature incorporating your orator; that to secure the payment of said bonds your orator has also by and with the consent of the said city of New Orleans, as provided in said act, made and executed in due form a mortgage bearing upon and including all of the property of your orator, and the franchise as a corporation, and that the said mortgage has been duly recorded, and is now in full force and effect.

12. And your orator further shows unto your honors, that among other rights conferred upon your orator is the right to
11 fix charges for water within the limits of the city of New Orleans, limited only by the provision that the net profits of the company from that source shall not exceed ten per cent. per annum upon the capital stock thereof.

13. And your orator further shows unto your honors, that your orator, the said New Orleans Water Works Company, has in all things acted in good faith; that it accepted the terms and conditions of said act of legislature only after having obtained the full consent of the city of New Orleans thereto, and by and with the full consent of the city of New Orleans as hereinbefore set forth; and that had your orator not supposed that your orator had thereby acquired and obtained the full, exclusive right and privilege of supplying the city of New Orleans with water by a system of public water works, to the exclusion of all other means and sources of supply through pipes or conduits brought into the said city, your orator would never have entered into said engagements, nor would the subscribers thereto have accepted the terms and conditions of said act, and surrendered and given up to the city of New Orleans for cancellation, the said water works bonds and obligations of the said city of New Orleans so by said subscribers and shareholders given to the said city of New Orleans in exchange for their said shares of said water works stock.

14. And your orator further shows unto your honors, that the only exception contained in said act incorporating your orator, wherein and whereby your orator was not entitled and authorized to furnish the entire public water supply brought into the said city of New Orleans in pipes and conduits, was the reservation made in favor of those persons in the said city of New Orleans who owned and occupied property contiguous to the Mississippi river, which said persons are, by the reservation contained in the eighteenth section of said

act of 1877, affected thereby, the said section providing that nothing in said act shall be construed so as to prevent the said council
12 from granting to any person or persons contiguous to the river the privilege of laying pipes to the river exclusively for his own or their own use.

And your orator saith, that in and by said reservation it was only intended to leave in the power of the council of the city of New Orleans so much power as would permit them to grant the right of laying pipes to the river, as set out in said section, only to such persons as owned and occupied property immediately on the bank of the river, with riparian rights reaching to the river; and was not intended nor can the same be lawfully construed as giving or reserving the power of the council of the city of New Orleans to grant the right to lay down such pipes to any person or persons occupying or owning property or premises not so situated.

15. And your orator further shows unto your honors that it would have been unable to place or negotiate the said bonds, or borrow the said money, nor would the shareholders in said company have ever given up or surrendered the obligations of the city of New Orleans by their exchange for said property in said water works and shares in said company if they had not believed and been advised that they acquired the exclusive right, so granted your orator, and that if such had been the popular belief in the money market, your orator, the subscribers to the capital stock of said company, would never have been able to comply with or carry out the provisions of said act of incorporation; and that if the shareholders and subscribers to the capital stock of the complainant corporation had for the moment believed that the city of New Orleans could lawfully claim or in good conscience exercise under the provision of said section eighteen of the said act of incorporation any right or power to grant to any persons the right or privilege of laying pipes to the river and obtaining their water supply therefrom, except as provided on the face of said section eighteen, where the property actually touched, or ran down to
13 the waters of the Mississippi river, your orator would never have exchanged the obligations of said city for said water works property or stock, and would in all things have been unable to have borrowed the money, or secured the means to extend said water works and enlarge the same and comply with the provisions of said act under which your orator is incorporated and acquired said works. And your orator files herewith a copy of the said act of legislature incorporating said complainant, with all the amendments thereto, and makes the same a part of this bill of complaint.

16. And your orator further shows unto your honors that the said city of New Orleans having received for the purchase price of said water works, and of the rights acquired by said city from the said Commercial Bank of New Orleans, the full value thereof in its own obligations otherwise payable in each at the maturity thereof, and having received also the said shares of the capital stock of the complainant corporation without having paid any cash consideration therefor; and the said shares of stock so delivered to the said city of New Orleans being by law stamped with a special property value

and character in the hands of the city of New Orleans, whereby the said city of New Orleans was and is entitled to, and has exchanged the same at the par value of one hundred dollars per share for other obligations, constituting the bonded and floating debt of the city of New Orleans, to the full value of said shares, and being so situated, not only as the warrantor to your orator of the character, quality or extent of said property so conveyed, but also holding such relations to your orator that even after she shall have parted with the last share of the stock so delivered to the said city of New Orleans, and shall have parted with her entire interest in said corporation as a shareholder, yet, by the terms of said act, your orator is compelled, as a corporation, to concede to the said city of New Orleans the said number of directors charged with the management of the
14 affairs of your orator, to be nominated, appointed and designated by said city of New Orleans, and when so appointed and designated in a number sufficient to control the acts of the said Board of Directors, and to put itself in the position of assuming to control, and to actually control the property and operations of said company, without in fact possessing, holding or representing a single share of the capital stock thereof, was bound in law, equity and good conscience to observe full faith in all of its said obligations, and bound to abide by a strict and equitable construction thereof, and to in all things in conscience and care avoid the perpetration of any wrong or injustice which should impair the property of your orator, or the shareholders therein, or throw or cast any cloud upon the property rights and franchise so conveyed to your orator for a valuable consideration, in all things fully equal to the actual money value thereof, and should warrant and defend your orator in the full and complete exercise of all said rights, privileges and enjoyment of the property so conveyed to your orator as aforesaid.

17. And your orator further shows unto your honors that the said city of New Orleans did, with reasonable good faith, execute and carry out her said duties and obligations as aforesaid, until the adoption of the constitution of the State of Louisiana, commonly known as the constitution of 1879; that by virtue of the provisions of section ten, article one, of the constitution of the United States, and by reason of the premises and of the peculiar relation of the said city of New Orleans to your orator, and the conditions and circumstances under which your orator acquired from the city of New Orleans the said rights in said water works, your orator was protected by the said constitution of the United States from any impairment or breach of the said obligations of the State of Louisiana, either as a state, or the said city of New Orleans as a municipal government charged with the control or management of the local affairs of the city
15 of New Orleans, and has the right to demand in all respects and particulars a full and complete observance of said contract and obligation, both by the State of Louisiana and the said city of New Orleans, and is entitled to the aid of this Honorable Court in the protection thereof, and claims the right guaranteed to it in that respect and behalf by the constitution of the United States.

18. And your orator further shows unto your honors that imme-

diately after the adoption and promulgation of the said constitution of the State of Louisiana, known as the constitution of 1879, the said council of the city of New Orleans, in bad faith and with intent to injure and wrong your orator, and to destroy the value of the property so conveyed by the said city to your orator, and to disregard, ignore and render of no avail their said warranty of title and right to said water works and franchises to your orator cast about for some excuse for bad faith and a disregard of the said obligation of warranty, and immediately asserted, and now asserts and pretends that certain provisions in the said constitution in the State of Louisiana, adopted in 1879, although adopted long after all of the matters hereinbefore set forth had become accomplished facts, and the rights of your orator in said property had vested, have the effect to absolutely destroy and cut off all the rights of your orator to furnish and provide a public water supply for the city of New Orleans, to the exclusion of all other persons, but also pretend and assert, that by reason of the provisions contained in said constitution, said city is absolved from all of its obligations so entered into, and is at liberty to levy war upon your orator and undermine and destroy its property, unrestrained by any rule of law, or equity, or good conscience, and now claims and pretends that the said city of New Orleans, through its council, has the right and can lawfully grant to any person occupying any premises in the city of New Orleans not contiguous to the Mississippi river, or its banks, the right to lay down and construct for themselves pipes, conduits and mains
16 running from the Mississippi river to any lot, block or establishment in any part of the city of New Orleans, and thereby take away from your orator the right of your orator to furnish said supply and to receive pay and remuneration therefor.

19. And your orator further shows unto your honors, that the said defendant is engaged in the business of extracting oil and the manufacture of soap at the corner of Tchoupitoulas and Julia streets and extending along Julia street from said corner in the city of New Orleans, has used and is using a large quantity of water; the precise quantity used your orator is unable to state, and asks discovery. That the said plant and establishment of the said defendant is large, and consumes a very large amount of water, and will, as your orator is informed and believes, continue in operation and in the use of water,

during the whole period of its chartered existence.

20. That in or about the month of May, in the year 1883, the said defendant or some person or persons or copartnership who preceded said defendant in the occupation of said premises and whom said defendant corporation succeeded in the use and occupation of said business and premises and in the use of said pipe or main laid from said premises to the river as set forth herein, pretending to act under authority of an ordinance of the city of New Orleans, the adoption of which was solicited and procured by the said defendant, set to work to make and construct a pipe or conduit from the Mississippi river, commencing at the river near

the line on which Julia street, if extended would touch the
17 river, carrying its pipe on and along and through Julia or other public streets to its said premises; that the same has been completed and put in use. Your orator is not advised exactly when, but alleges that it believes that said pipe has been completed a long time, and that if it has not been completed and laid down, it is nearly in a state of completion, and that by pumping machinery or other devices, water is or will be led along through said pipe from the Mississippi river to the said defendant's premises, and the water supply used in said premises for the purposes aforesaid and for other purposes, in violation of the rights of your orator, and the terms and conditions of the charter and grant so made unto your orator as aforesaid, wherein and whereby your orator became and was vested with the exclusive right to furnish unto said defendant on its said premises the entire water supply used in and on said premises drawn from the Mississippi river, through pipes or conduits, by means of pumping machinery.

21. That said wrongful act was done by the said defendant without the assent or permission, and against the will and protest of your orator. That your orator is informed and believes that the said defendant pretends to have derived some authority, license or permission from the corporate authorities of the city of New Orleans to lead said pipe from the river to said premises, and supply said premises with water through said pipe. But your orator charges that the said city of New Orleans, and the authorities thereof, are and were wholly without authority to grant any such license or confer upon the said defendant any such privilege or warrant to lay and use said pipe or main from the Mississippi river to the said premises, as aforesaid.

22. And your orator further shows unto your honors that the said premises is not contiguous to the waters of the Mississippi river
18 or the banks thereof, nor does the property upon which the same is erected extend to the Mississippi river; nor does the defendant own or possess the property lying between its said premises on Julia street and the Mississippi river, but on the contrary thereof, the same is situated at some considerable distance from the Mississippi and that other lands and public streets intervene and lie between the said premises and the nearest point on the Mississippi river.

23. And your orator further shows unto your honors that the said city of New Orleans and the said defendant pretend that the city has the lawful right to disregard its obligation and commit and effect said breach of good conscience, of its contract of warranty and its obligation growing out of the premises, for and by reason of the provisions contained in the constitution of the state of Louisiana, as adopted in the year 1879, and particularly in the 258th article thereof, and claim and pretend that by reason of said provisions and enactments in said state constitution, the said city is absolutely absolved from all observance of the terms and conditions of its contract, obligation, and all obligations which, in equity and good con-

science, are imposed upon and should be observed by said city of New Orleans by reason of the premises, and that said defendant join with the said city of New Orleans in asserting the alleged right of the city of New Orleans to disregard the said obligation and the constitution and laws of the United States, and to practically confiscate in the hands of said shareholders of said Water Works Company, your orator, their property therein acquired by them in an honest exchange of the existing debts and obligations of the city of New Orleans, which, but for the act of the said shareholders in exchanging said bonds and obligations for said shares in said Water Works Company, the said city of New Orleans would have been compelled to pay, with the interest thereon, in money.

24. And your orator further shows unto your honors that
19 it is advised, informed and believes that the said complainant in law and equity and good conscience ought to be protected from such wrong and fraudulent acts by the provisions of the constitution of the United States, and the settled adjudications of the Supreme Court of the United States, construing and applying said provisions of the Federal constitution.

Your orator further shows unto your honors that although the holders of the bonds of the city of New Orleans, who surrendered their bonds in exchange for shares in the Water Works Company are in worse condition, financially, than they would have been if they had retained their bonds (the market value of the bonds not surrendered being at all times higher than the market value of the water works stock, and the interest due on the outstanding bonds of the city of like character to those surrendered greater than any dividend that has or can be declared or divided to the shareholders from the earnings of the company); yet notwithstanding this, every device that could be bred of bad faith and unfair dealing has been resorted to to injure the shareholders and further depreciate their property invested in said shares.

That as the charter was first framed and conditioned by the first act of the legislature (the act of the extra session of 1877), it was no avail to the city as a means of retiring part of the funded debt, for the reason that the terms of the law were so severe as to the amount of enlargement and improvement to be made to the water works that no bondholders would surrender their bonds in exchange for interest or shares in the water works, section 13 of the act requiring the construction of practically new works and pipes. The city of New Orleans finding that it could not dispose of the water works under the terms of the act during the succeeding year, 1878, applied to the state legislature to modify the terms of the charter and change the condition bearing upon any company that should organize under the act into such form as to make the act available
20 for the purpose of reducing the funded debt of the city as originally designed and intended.

The legislature, by an act approved February 26th, 1878, being act No. 143 of the acts of that session, passed and adopted an entire change in the terms of the charter of 1877 in respect of the burdens to be imposed on any company organized under the act and amended

section 13 of the act, so as to define and declare what was intended by the terms "full and adequate supply of water," referred to in said section 13, and declared that the same language as used in said section 13 should be construed only to require a supply of water at the height of fifteen feet from the ground wherever the pipes of the water works existed at the date of the passage of said amendatory act, thereby only imposing upon any company that might avail itself of the act as amended, the obligation to put the then existing machinery, reservoirs, pumps, mains and pipes in such state of repair as to be able to effect the distribution of water with a hydrostatic pressure equal to a column of water of a height of fifteen feet from the surface of the ground.

The act, with this modification and amendment, was accepted by the holders of city bonds, who surrendered the requisite amount in bonds for exchange into the requisite amount of shares of stock to effect the organization or corporate existence under the charter.

That as the act of 1877 stood before amendment by the act of 1878 aforesaid, in the eleventh section thereof there was embodied an express contract that the city of New Orleans, as the consideration for the total exemption of the franchises and property of the water works company from all taxation, state, parochial and municipal, shall be allowed to have the right to use, free of charge therefor, water for (1) The extinguishment of fires; (2) the cleansing of streets; (3) for the use of all public buildings, public markets and charitable institutions of every kind then existing.

21 The number of hydrants which the company was obligated to provide for the purposes aforesaid was limited to two hydrants for each block where a main pipe was laid. The act of 1878 changed by amendment this contract by striking out the word "state," so as to leave the contract in form to exempt the water works company, not from state taxation, but from all other taxation whatsoever as a consideration for supplying water to the city, specified at a pressure caused by force enough to raise water fifteen feet from the ground.

The contract was in this form when the act and charter were accepted by the shareholders and a corporation created.

That the city of New Orleans had no sooner disposed of the said water works as aforesaid, than it entered upon a course of extreme bad faith and asserted a right to tax the property of your orator notwithstanding said contract, and it assessed against your orator a municipal tax upon the alleged valuation of your orator's property in the water works for the year 1881, and instituted suit against your orator to recover the same, and did recover against your orator the full amount of said tax, the court dividing upon the question whether said exemption from taxation was the sole or a part consideration for furnishing public water supply, the bare majority of the court holding that it was not the entire consideration for water supply, and that the city of New Orleans must pay to your orator each year for water supplied, as provided in the charter, a sum equal to the amount of municipal taxation levied and collected by the city from your orator for that year, leaving the relation between the

city of New Orleans and your orator involved in much uncertainty as to the exact contract relations, and as to the exact amount of provision to be made in each annual estimate or budget of the city for the payment of the claim and debt due to your orator in the condition of affairs in which the courts had left the construction of the charter of your orator in relation to said public water supply.

22 That if the water supply required by the city of New Orleans had remained limited to the supply as provided in the charter of the Water Works Company, it was in all things competent, as your orator is advised, for the city of New Orleans to settle by contract and convention the amount to be paid to your orator for water supply in place of the consideration of exemption from taxation impeached by the act and motion of the city and no action of the legislature of the state was necessary to authorize such liquidation of municipal liability, or to render the amount to be paid by the city, definite in amount by contract. But, the truth is, that the city of New Orleans required and demanded more water for public use than your orator was by law, and the terms of the contract contained in its charter, required to furnish under the provisions of its charter. And to that end, on or about the 4th day of October, 1884, the city of New Orleans entered into a contract with your orator for a very different service of public water supply, different from the service provided for in your orator's charter, a copy of which said contract is herewith filed marked "Exhibit B," and made part of this bill; by which it will and does appear that in lieu of two hydrants for each block, the city demanded as many hydrants as it might elect to demand; also water for the use of the public schools, (not public buildings in the sense in which that term is used in the charter), and for all charitable institutions to be instituted in future.

The city also demanded and obtained in said contract, the power at the will of the city, at the cost and expense of your orator, to change the location of all fire plugs and hydrants. Water supply was also further required by the city for free distribution by the city to all persons residing outside of the area covered by the pipes and mains of your orator, in case of drought, the area of the city and the number of people residing outside of the territory covered by the pipes and mains of your orator then being, and still is, very large.

23 And further, instead of a pressure equal to the weight of a column of water fifteen feet in height, the city of New Orleans desired a pressure equal to a column of water fifty feet in height, to be maintained from the hours of 7 A. M. to 6 P. M. with reservoir, supply in store between these hours at night, of increased measure; requiring such additions to the works of your orator as would supplement its reservoir supply, so that in case of accident it might be adequate to any possible contingency of the supply of water at a height of fifty feet, all of which additions were in excess of the obligations imposed on your orator by the terms of its said charter, and involved your orator in great additional expense, in increasing the strength and capacity of the works, largely increased consumption of fuel and increased losses from leaks and wastage by

its other consumers communicating with its system and taking supply from the same mains and pipes; being in all things a different and larger supply of water for public use than any statute condition of the charter had ever imposed on your orator as a condition or consideration for exemption from municipal taxation, and requiring water to be delivered at more than three times the pressure required by law.

Your orator shows unto your honors that the government of the city of New Orleans had, as your orator is informed and believes, full authority under the charter of the city, to make provision for such increased public water supply in such form, without any further legislation by the state, and that it was fully within its power, and in the line of the duty of said city government to make such provision, and enter into such contract with your orator; yet, the legislature of the state believing that the consideration for supplying the city of New Orleans with water, free, rested solely on the consideration of exemption from municipal taxation, on the 7th of July, 1884, passed and promulgated an act of legislature, duly approved, being act No. 56 of the acts of 1884, (which said act or a copy
24 thereof is filed with this bill as an exhibit, and made part hereof marked "Exhibit A"), the fifth section thereof providing, nothing in the act should be construed as in any manner affecting any rights, franchises or privileges of your orator, but that all of the same shall remain intact and unaffected thereby.

That said act conferred or granted no rights or privileges on your orator, nor did it in any manner enlarge the power of the city of New Orleans, in dealing with your orator concerning public water supply, as your orator is informed and believes, yet the defendant herein, and others who seized upon the said act from the fact that the contract aforesaid, between the city of New Orleans and your orator had been made, as excuse for wronging and injuring your orator, and invading its rights, not only pretending that your orator has no right to the exclusive rights granted in its charter by reason of the article of the constitution of 1879, to which your honors have been referred; but also pretending that by reason of the provisions of some other article of the constitution, act No. 56 of the acts of 1884, is null and void by reason of various alleged vices, averring that the title is defective, that the act is double and deals with more than one subject and that the same is unconstitutional by reason of the fifth section thereof, providing that the rights and franchises of your orator are not to be affected by said legislation.

At other times they pretend that by reason of the said act and said contract, and of article 234 of the constitution of 1879, your orator has lost the rights granted to it in its charter, if any such were ever granted, and that by reason thereof the defendants have lawful right to invade and disregard the rights of your orator to the exclusive right to furnish water to the inhabitants of the city of New Orleans as granted in said charter.

Your orator shows unto your honors that said act, whether it be valid or not, was in fact an act relating to the powers of the city

of New Orleans and did not alter or change the charter
25 of your orator, nor was it necessary to authorize the execution of the said contract with the city of New Orleans relative to said increased water supply.

That if it be true that the act is unconstitutional, null and void, it is of no effect for any purpose whatsoever, and cannot affect either the city of New Orleans, your orator, or any controversy, and in all things stands as if it had never been written.

Your orator further shows unto your honors that if the effect of said article of the constitution, or any other provision of the said constitution of 1879 is to make an act of the character and description of said act No. 56 of the acts of 1884, adopted with the reservation and condition contained in section five thereof, destructive of any of the contracts and rights granted to your orator as a corporation, your orator is advised, and so avers and insists that the said article No. 234 of the said constitution of the state, as adopted in 1879, and all other parts and portions of the said constitution construed or capable of construction to produce such result, are to that extent null and void and repugnant to the constitution of the United States and in all things impair the contract between the state and your orator as contained in its said charter, adopted and accepted long before said adoption of said constitution.

And your orator prays that your honors will so adjudge and decree, and adjudge that the defendant has no right to invade and destroy the rights, privileges and franchises of your orator by reason of said contract with the city of New Orleans, or by reason of anything contained in, or any effect flowing from said act No. 56 of the acts of 1884, and that said matters and pretenses aforesaid make and constitute no defence against the action of your orator.

25. And your orator further shows unto your honors that the said defendant from and since the date of the laying down
26 of the said pipe from the Mississippi river to its said premises extending along and through said public street or streets has been constantly engaged in supplying said premises and oil and soap works with water pumped or forced through said pipe, and has established a machine or device for forcing or drawing water through said pipe, and has in that manner obtained the supply of water used in said premises for all purposes.

26. And your orator further shows unto your honors that your orator has on and along the said streets adjacent to the said premises occupied by the said defendant as a- oil and soap works adequate and sufficient pipes and mains connecting with and forming a part of its system of water distribution, and water works for the supply of the inhabitants of the city of New Orleans, in all things adequate and sufficient to deliver to said defendant on said premises any amount of water required or used by the said defendant and its operations as an oil and soap works, or in the business carried on on said premises, and that your orator has at all times had the lawful right to deliver to and on said premises any and all amounts of water delivered on said premises, or used thereon,
27 reaching said premises through pipes, conduits or through

the instrumentality of pumping machinery or other device, and has been at all times entitled to have and receive a due and proper remuneration therefor.

27. That your orator has no means of ascertaining exactly the amount of water delivered on said premises and used and expended on said premises through the operations of the said defendant and is unable therefore to state with exactness the amount of remuneration or pay that it should receive and be paid by the said defendant for the water supply on said premises.

28. That your orator shows unto your honors that it has reason to believe and does believe that the price which your orator would have earned and should receive for the water pumped or carried from the Mississippi river to said premises since the date when said pipe was laid down and put into operation by the said defendant far exceeds the sum of two thousand dollars, and that if said pipe is permitted to remain and be used by the said defendant for the supply of said premises with water without remuneration or the consent of your orator, or during the lifetime of the charter of the said defendant, or during the period of the future operations of the said defendant of the said premises as aforesaid, the pecuniary loss of profit and damage resulting to your orator will amount to a further sum largely in excess of the amount above stated.

That unless restrained by the due and proper order of this honorable court the said defendant will continue to draw water supply through said pipe and main in utter disregard of the rights of your orator in the premises and of the right, privilege and franchise of your orator to supply said water to said premises during the life time of the charter of your orator and during the period which it is lawfully entitled to supply by the terms of the said act of the legislature of said state, to the great pecuniary loss and damage of your orator, and to the encouragement of other evil disposed persons.

28 29. And your orator further shows unto your honors, that the surrender of the said obligations of the city of New Orleans and the exchange thereof into and for the shares of stock in said New Orleans Water Works Company, subject to the said conditions of said charter, has been far from profitable to the said shareholders of said company; the market value of said shares are not at par, and your orators have never earned or divided among its shareholders a sum equal to ten per cent. on the amount of said shares, or the cost of said water works to the shareholders and to your orator, and has little prospect, from present indications, of being able to so declare or make a dividend equal to ten per cent. on the capital stock of the company, during the existence of its chartered rights; that if the said pretended power of the city of New Orleans to grant rights to private parties and corporations to lay down pipes and mains on property not adjacent to or lying immediately on the river, and draw through said pipes their said supply of water, without regard to the rights of your orator, is held to be valid and lawful, your orator's rights and property in said water works will become practically confiscated and of no value, and the shareholders in said

company will have received practically no value whatsoever for the said obligations of the said city of New Orleans so surrendered and exchanged by them for said property.

30. And your orator avers that the said act of the city of New Orleans is a fraud upon the rights of your orator, and that said defendant at all times full knowledge of the rights of your orator in the premises, and that the said act of the city of New Orleans was fraudulent, in bad faith, and contrary to law, yet, unless restrained by the order, injunction and decree of this honorable court, the said defendant will continue to avail themselves of the said pipe or conduit so laid down as aforesaid, and operate the said pipe or pipes to procure the entire supply of water consumed on said premises during the period of the lifetime now remaining to
29 your orator, as a corporation, and cause your orator a continued pecuniary loss and injury during the whole of said period.

31. That your orator is remediless in the premises in a court of law, and therefere applies and appeals to this honorable court, sitting in equity having peculiar and full power in this behalf and jurisdiction in the premises, by virtue of the premises and the constitution and laws of the United States.

That all said actings and doings of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

Therefore, to the end that the said defendant, if it can show why your orator should not have the relief herein and hereby prayed for, your orator prays that the said defendant may, according to the very best of its knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the premises, the oath of the said defendant to said answer being hereby waived.

That after due proceedings had, may it please your honors to grant unto your orators the writ of injunction, both provisional and perpetual, enjoining the said defendant its agents, servants and attorneys, and all manner of persons associated with it, in the conduct, management and operation of the oil and soap works or any and all business carried on on said premises involving the use of water and the said instalment and plant, that they desist and refrain from laying, constructing, making, using, or causing to be laid, constructed, made or established any pipe, pipes, conduits or mains from any point on the Mississippi river or from any
30 other public waters to the said premises so occupied by the said defendant or any other like premises using steam for mechanical purposes, and from using or continuing to use, for the purpose of procuring a water supply for any other use on said premises, any pipe or main now laid, made, or in existence, leading from the Mississippi river to said premises; and from drawing, pumping, leading, or causing to be drawn, pumped or led through such main, pipe or conduit, by or through the instrumentality of pumping machinery or any other device any water, or water supply, to be used, consumed or stored in and on said premises so occupied

by it or in or on any other premises for subsequent use as a water supply to be consumed on said premises for the purposes of manufacture or for any other purposes. From setting up or pretending to receive or derive any authority from laying, continuing or using any pipe, main or conduit under and by virtue of any legislation or pretended legislation or ordinances of the city of New Orleans, made, adopted or promulgated at any time since the date when your orator acquired said water works as aforesaid; and from having or receiving a water supply on said premises reaching or being taken to said premises through pipes, conduits, or mains, or by or through the instrumentality of pumping machinery, during the continuance of the right of your orator, and its life time under the charter, from any other source than from the pipes, mains or conduits of your orator.

And that the said defendant be decreed to come to a just, full and exact account of all the water which it has pumped, or cause to be pumped, or led to said premises by or through the said conduit or main running from said premises to the Mississippi river during the whole of the period for which said pipe has been in use, and so used by the said defendant as a source of water supply to said premises, and that when ascertained your honors decree unto your orators full and exact remuneration and pay therefor
31 in such sum, and at such rate per thousand gallons as shall be found to be the schedule established rate of remuneration due to your orator to be arrived at, when by discovery it shall be ascertained exactly what supply of water has been by the said defendant drawn through said pipe and used on said premises.

And may it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, directed to the said Maginnis Oil and Soap Works, commanding the said defendant on a day certain, under a certain penalty therein to be specified personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises and to stand to, perform and abide such order and decree therein as your honors shall seem meet and just, and grant to your orator such other and further relief in the premises as shall seem meet, and agreeable to equity and good conscience, and the nature of the case may require, and your orator will ever pray, etc.

NEW ORLEANS WATER WORKS CO.
[SEAL.] R. L. MACMURDO, *Sec'ty & Treas'r.*

J. R. BECKWITH,
Solicitor and Counsel for Plaintiff.

32 EASTERN DISTRICT OF LOUISIANA, } ss:
Parish of Orleans, }

L. H. Gardner, being duly sworn, deposeth and saith that he is the General Superintendent of the New Orleans Water Works Company named in said foregoing bill of complaint, that he knows the contents thereof, and that the matters set forth in said bill of complaint as he believes are true as therein set forth except as to such

matters as are set forth on information and belief, and that as to all such matters he believes the same to be true as stated in said bill of complaint, and further saith not.

L. H. GARDNER.

Sworn to and subscribed before me, notary, at New Orleans, La., this 23d day of April, 1887.

[SEAL.] A. S. BECK, *Not. Pub.*

33 APPENDIX.

EXHIBIT A, Filed with Bill.

APRIL 23, '87.

No. 56.] AN ACT

To provide for the supply of water to the city of New Orleans, by the New Orleans Water Works Company, in cases of the municipal taxation of said company; to authorize provision to be made for the payment of water supplied and to be supplied; to provide for obtaining a supply of clear or filtered water by the New Orleans Water Works Company, and to enable the city of New Orleans to contract for the same; to regulate the payment of taxes imposed on said company contrary to the exemption given in its charter and to put into effect section 11 of act No. 33 of acts of 1877, E. S., in instances of refusing or contrary to the exemption therein.

Whereas, Due notice and advertisement has been given and made of the intention to apply for this act pursuant to article 48 of the constitution of this state; and

Whereas, The New Orleans Water Works Company is being subjected to municipal taxation notwithstanding the exemption from taxation granted by its charter in consideration of water to be supplied to the city of New Orleans; and

Whereas, It is possible and desirable to furnish the inhabitants of New Orleans with clear or filtered water from the Mississippi river; therefore

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That in all instances of the taxation of the franchises or property of the New Orleans Water Works Company for any year or years by or for the city of New Orleans, or for municipal purposes, whether such taxation be for past or future years, and the said company be in any manner obliged to pay, notwithstanding the exemption granted in section 11 of act No. 33 of acts of 1877, E. S., then, in all such instances, the said city of New Orleans is hereby empowered and required to pay the said company the value of
34 all the water the said company has supplied or shall supply during any year or years, for which said taxes have been or shall be levied, to or for the use and purposes of the city of New Orleans, its public buildings, markets, or for streets, gutters, extinguishment of fires or other public purposes.

SEC. 2. *Be it further enacted, etc.*, That in all instances of such taxation, contrary to said exemption, or any future year or years, the city of New Orleans shall provide in its budget, or shall set apart and appropriate a sum sufficient to pay for the said water supply for said year or years; and unless this be observed and done, the said company shall not be compelled to deliver water for the uses and purposes aforesaid.

SEC. 3. *Be it further enacted, etc.*, That any taxes already imposed for any year, contrary to said exemptions, shall not be exacted, nor any penalty or interest accrued be demanded thereon, or any begin to run until said city shall have provided for the payment of the water supplied in said year, or provision made therefor by remedy at law or equity.

SEC. 4. *Be it further enacted, etc.*, That to secure the inhabitants of New Orleans and to the use of the city a supply of filtered or clear water, the city of New Orleans be and is hereby empowered to contract with the said company, and determine upon terms and conditions, and fix a price for obtaining from said company such supply of clear or filtered water.

SEC. 5. *Be it further enacted, etc.*, That nothing in this act shall be construed as in any manner abridging or otherwise affecting any of the rights, franchises and privileges heretofore granted to said company; but all such rights, franchises and privileges shall continue and belong to said company.

SEC. 6. *Be it further enacted, etc.*, That all laws or parts of laws inconsistent herewith be and are hereby repealed, and this act shall have effect from and after its promulgation.

H. W. OGDEN,
Speaker of the House of Representatives.
CLAY KNOBLOCH,
Lieutenant Governor and President of the Senate.
S. D. McENERY,
Governor of the State of Louisiana.

Approved 7th July, 1884.
A true copy from the original.
OSCAR ARROYO,
Secretary of State.

35 EXHIBIT B, Filed with Bill.

APRIL 23, '87.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
PARISH OF ORLEANS—CITY OF NEW ORLEANS.

Be it known, That on this third day of the month of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the independence of the United States of America, the one hundred and ninth.

Before me, Joseph Dewey Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and quali-

fied, and official notary of the city of New Orleans, and in the presence of the witnesses hereinafter named and undersigned—

Personally came and appeared the Honorable Joseph Valsin Guillotte, the mayor of the city of New Orleans, herein acting in his official capacity as mayor aforesaid, being herein and hereunto specially authorized and empowered by ordinance number 909, Council series, adopted by the Council of the city of New Orleans on the 23d day of September, A. D. 1884, a duly certified copy of which ordinance is hereto annexed and made part hereof.

Also came and appeared Mr. Albert Baldwin, president of and herein representing the New Orleans Water Works Company, being herein and hereunto specially authorized and empowered by a resolution of the board of directors of said Water Works Company, passed at a meeting of said board, held in the city of New Orleans on the 27th day of September, A. D. 1884, a certified copy of which resolution is hereto annexed and made part hereof.

Whereupon, said Albert Baldwin, in his said capacity as president, declared and does declare that he accepts all and singular the *the* terms, conditions, provisions, obligations, rights, benefits and advantages set forth and contained in said ordinance No. 909, adopted by the Council of the city of New Orleans on the 23d day of September, A. D. 1884, and approved by the mayor on the 26th day of September, A. D. 1884, thereupon duly promulgated, and
36 which said ordinance, so accepted by said Baldwin, President, in the words and figures following, to wit:

AN ORDINANCE

To carry out Acct No. 56 of the acts of 1884, providing for a future water supply from the New Orleans Water Works Company, to and for the city of New Orleans and certain institutions, and regulating the use of water and the payment therefor.

Whereas, the city of New Orleans has been, and is, and will be, unable to allow the New Orleans Water Works Company the fifty years exemption from taxation, being the consideration for a free supply of water, contemplated by section 11 of act No. 33, of the acts of 1877; and the courts having decided that the exemption from municipal taxation, granted in said act, is not, and shall not be enjoyed, and therefore, as is also decided, that the city must pay for the water supplied by said company; and

Whereas, it is best to arrange for a fixed annual price for said water supply, rather than leave the city liable to an annual demand, the amount of which cannot be known in advance, and from which the city cannot be relieved, but is specially authorized and required to provide for the payment therefor; and

Whereas, the said New Orleans Water Works Company is willing to accept terms, arranging for a sum to be determined in advance of each year, and which amount can be readily and equitably fixed according to a mode adopted in other cities, by reference to the number of fire hydrants, fire plugs or fire wells, now numbering eleven hundred and thirty-nine (1139) in this city; therefore,

SECTION 1. Be it ordained by the city council of the city of New Orleans, that during the term of the charter of the New Orleans Water Works Company, beginning with the year 1885, the supply of water for which this ordinance provides, shall be furnished by the said company from the pipes and plugs of said company, now laid or hereafter to be laid, for the following purposes, to wit: For the extinguishment of fires and the cleansing of the gutters; for the use of all existing public buildings, public markets, public squares and places, public schools and the public charitable institutions supported and to be established and supported by the state or city, and
37 now supplied by the said company; it shall be the duty of said company to keep and maintain a head or pressure of water of not less than fifty feet head, between the hours of seven A. M. and six P. M.; and the reservoir supply at night and between these hours shall be of such abundance as amply to cover the needs of the fire department for extinguishing fires; and said company shall make such provision as may be necessary to reinforce or supplement said reservoir supply in case of need or accident. In consideration for said supply, the city of New Orleans shall pay, during the term of said company's charter to the said New Orleans Water Works Company sixty ($60) dollars per annum for each and every fire plug, fire hydrant and fire well connected with the mains or pipes of said company, of which said fire plugs, fire hydrants and fire wells there are now eleven hundred and thirty-nine (1139), which number shall ever be the least number of the annual sum to be paid to said company, and for every additional hydrant, fire plug or fire well exceeding said number, hereafter attached to said pipes or mains, the city shall pay an additional sixty ($60) dollars per annum.

SEC. 2. Be it further ordained, etc., That the city of New Orleans shall have the power in time of drouth to furnish water to such persons as may live outside the lines (of) the pipes of said water works company free from all charges by the same, and shall have further power by ordinance duly passed and notified in writing to said company, before each annual appropriation for said supply, to decrease or increase the number of fire plugs, fire hydrants and fire wells for the ensuing year, all such ordinances to designate the locations for the new attachments or intended cut-offs; provided, however, that the number of said fire hydrants, fire plugs and fire wells be not reduced below eleven hundred and thirty-nine (1139), the intent thereof being that the annual price to be paid for said water supply shall never be less than as fixed herein, by reference to the now existing number of said fire plugs, fire hydrants and fire wells; but the city expressly reserves the power to change the location of any and all of said fire plugs, hydrants or wells whenever the council shall deem it necessary, said changes to be at the cost of the company.

SEC. 3. Be it further ordained, etc., That the city of New Orleans shall annually set apart, appropriate and provide in its
38 annual budgets of expenditures and receipts, beginning with those for the year 1885, and in all successive budgets for each year successively, a sum sufficient to pay for said annual water supply, as fixed in the foregoing sections of this ordinance; and that

said annual sum or price shall be paid to said New Orleans Water Works Company, in twelve equal and monthly installments, one on the last day of each consecutive month, beginning in the month of January, 1885, for the year 1885; and beginning also in the month of January in each year thereafter; and in event of prompt cash payments of said installments during each year, the city of New Orleans shall be entitled to deduct and retain from the last installment in each year six per centum of the entire amount paid and payable to the said company in and for said year; but should any installments be unpaid when due, it shall bear interest at the rate of eight per centum per annum, from the end of the month in which it was payable, until finally paid.

SEC. 4. Be it further ordained, etc., That it is hereby made the duty of the comptroller or auditing officer, and of the treasurer of said city of New Orleans, carefully to set apart and keep, as a distinct fund, the moneys or collections which shall have been appropriated in each year, pursuant to this ordinance, and such proportion of all collections of the revenue as shall have been appropriated in the budgets to and for said company, or the said water supply for each year shall be carefully and exactly set apart by said officers as collected, and shall be warranted for by said comptroller and paid by said treasurer to said company, during each month, without further direction, ordinance or authority than that hereby given.

SEC. 5. Be it further ordained, etc., That the New Orleans Water Works Company shall have the right to inspect and to examine into the use of water to be supplied under this ordinance, and the city of New Orleans and its officers shall see that no water is taken or used except for the purpose aforesaid, and that there shall be no waste nor more water taken and used, than may be actually necessary for the purposes aforesaid; and to this end the city of New Orleans shall adopt all proper measures or ordinances to prevent waste and to prevent any use of water except for the purposes herein designated; and it is hereby made the duty of the
39 officers of said city, and of those of any and all public buildings, and public institutions, and of all persons using water under this ordinance, to prevent waste and to prevent the use of such water except for the actual need for the purposes aforesaid.

SEC. 6. Be it further ordained, etc., That the mayor be and is hereby authorized and directed to execute a contract by a notarial act, to and with said company, embodying and carrying out the provisions of this ordinance.

SEC. 7. Be it further ordained, etc., That all ordinances or parts of ordinances, inconsistent or in conflict with this ordinance, be and the same are hereby repealed.

Adopted by the council of the city of New Orleans, September 23d, 1884.

M. McNAMARA,
Clerk of Council.

Approved September 26th, 1884.

J. V. GUILLOTTE, *Mayor.*

A true copy.

TH. BUISSON,
Secretary to the Mayor.

And said Joseph Valsin Guillotte, mayor, and said Albert Baldwin, president, having each read and declared himself fully cognizant of the contents of said ordinance, do severally declare that they do hereby contract, engage and agree, one with the other, according to the terms, provisions, conditions and language of said ordinance, all and singular of which said terms, conditions, provisions and language shall be and is hereby made a contract engagement and agreement between said parties, the city of New Orleans and the New Orleans Water Works Company: to be observed and carried out and held and maintained inviolate during the entire term and existence of the said New Orleans Water Works Company, its assigns or successors, as now fixed in the charter of said company, being a period of fifty years from the incorporation of said company.

The said Albert Baldwin, as president aforesaid, engages to furnish and supply water from the pipes of said company in the manner, at the times, and for all purposes and objects as set forth in and pursuant to the provisions and requirements of the said ordinance No. 909, Council Series, to furnish or supply water to and for the public places, buildings and institutions, as in and by said ordinance required; to allow the city of New Orleans in time of drouth, said state or condition of drouth to be decided by the board of this company and the city council, to furnish water to such persons as may live outside the lines of the pipes of the said company for the needs of said persons, without waste and by such means of transportation by carts, wagons, barrels or like appliances as said city may provide and furnish, all pursuant to the intent and purpose of sections second and fifth of said ordinance; to observe and obey any ordinance duly notified to said company directing the increase of the number of fire plugs, fire hydrants and fire wells, or the decrease thereof, provided said decrease be and not below eleven hundred and thirty-nine (1139) in number, all according to section third of said ordinance; and further, he engages and contracts as president aforesaid, to do, perform and give and to observe, carry out and fulfill all things required of said company by or in said ordinance.

In consideration whereof, said Joseph Valsin Guillotte, mayor, aforesaid, engages and contracts to pay unto said company, annually, the sum of *sixty* (*$60*) *dollars* for each and every fire plug, fire hydrant and fire well connected with the mains or pipes of said company, of which there are now *eleven hundred and thirty-nine* (*1139*), and which number shall ever be the least measure of the annual sum to be paid said company; to pay said company, annually, *sixty* (*$60*) *dollars* for every additional hydrant, fire well or fire plug exceeding said number of eleven hundred and thirty-nine (1139), and hereafter attached to said mains or pipes; to notify said company, in writing, of all decrease or increase required, of said fire hydrants or wells; to make promptly, fully, and specially, the annual appropriations and monthly payments as required by and in section three, of said ordinance, the city to deduct or retain from the last monthly payment in each year six per centum of each annual sum paid and to be paid said company, as provided in said section three;

to hold and set apart and keep as a distinct fund, the moneys
41 or collections as required by said ordinance, and upon request or demand of said company on the last day of each month in any year, the comptroller of the city shall warrant on the treasurer for, and the treasurer shall pay from said moneys or collections, the installments which at that time shall be due, without other authority or ordinance than said ordinance; and the comptroller or auditing officer and the treasurer of the city shall faithfully carry out and promptly obey all the requirements and provisions of the fourth section of said ordinance, and shall raise no obstacle nor impose any delay in obeying the same; and it shall be the duty of each, in his respective department, to keep all money and collections appropriated under said ordinance and this contract, as separate from all other moneys, and as a distinct fund; all pursuant to and in accordance with said section four.

The said company shall have the right to inspect and to examine into and concerning the use of water supplied by it, and none of said water shall be wasted or used otherwise than for the purposes named in said ordinance, and to the extent of the actual need for said purposes, all as provided in section five of said ordinance; and to this end the officers and persons designated in said section five and the city of New Orleans shall do, perform and abstain from doing the things set forth in said section five of said ordinance.

Further, it is agreed, understood and stated by and between the said parties, that the specification or detailing in this instrument of the several rights, duties, obligations and things to be done, performed, observed, carried out or abstained from respectively, does not and shall not limit, modify or in any manner take from the effect of any of the terms, conditions, provisions or expressions of said ordinance, all of which are, by these presents, accepted and made binding, effective and operative upon and between the said New Orleans Water Works Company and the city of New Orleans, their assigns or successors, for and during the term named in the charter of said company.

Thus done and passed in my office in the city of New Orleans, aforesaid, the day, month and year first aforesaid, in the presence of Charles G. Rebentisch, and George R. Goetz, witnesses of law-
42 ful age, residing in this parish, who have signed their names with said parties, and me, notary, after due reading of the whole.

Original signed:

J. V. GUILLOTTE, *Mayor*,
ALBERT BALDWIN,
Pres. N. O. Water Works Co.
C. G. REBENTISCH,
GEO. B. GOETZ,
J. D. TAYLOR, *Notary Public.*

A true copy of the original.
NEW ORLEANS, October 14th, 1886.

J. D. TAYLOR,
[L. S.] *Notary Public.*

43 *Rule for Injunction Pendente Lite. Entered and Filed* 6 *June*, 1887.

United States Circuit Court, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL & SOAP WORKS. } No. 11565.

On motion of J. R. Beckwith, Esq., solicitor for complainant, it is ordered that the defendant show cause, on the 11 day of June, 1887, at 11 a. m., why a writ of injunction *pendente lite* should not issue herein as prayed for in the bill on file.

Marshal's Return.

Received June 7, 1887, by the U. S. marshal, and on the 7th day of June, 1887, I served a true copy of the within motion and order on W. S. Benedict, Esq., by handing the same to him in person.

(Signed) R. B. PLEASANTS,
U. S. Marshal.
JOHN BAKER,
Deputy U. S. Marshal.

Appearance of Defendant. Filed June 6, 1887.

44 U. S. Circuit Court. In Equity.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
MAGINNIS OIL & SOAP WORKS. } No. 11565.

Now, by the undersigned, the solicitor, comes the Maginnis Oil & Soap Works, through Jno. H. Maginnis, its president, and enters its appearance herein.

New Orleans, June 6th, 1887.

(Signed) W. S. BENEDICT, *Solicitor.*

Exhibit Offered by Defendant and Filed 11 *June*, 1887.

45 NEW ORLEANS WATER WORKS COMPANY,
No. 1211. NEW ORLEANS, *October 1st*, 1883.

Received of Mr. A. A. Maginnis & Son- one thousand dollars for a supply of water at No. 85, 87, 89, 86 Commerce streets, from date to 30th September, 1884, for oil works.

This bill is paid and the amount is received by the company under the rules, restrictions, and agreements printed on the reverse hereof.

$1,000.00. —— ——, *Collector.*

Rules, &c., printed on reverse.

Rules, Regulations, and Penalties Regarding the Use of Water.

1. No subscriber will be allowed to supply water to any person or to use it for any purpose not specified in his receipt. For an infraction of this rule the supply will be cut off and the amount of payment forfeited. It is also punishable by fine or imprisonment under city ordinances.

2. No addition to or alteration whatever in or about any conduit pipe or water-cock shall be made or caused to be made by per-
46 sons taking the water, without notice thereof being previously given to and permission had in writing from the office of the company.

3. Subscribers must keep their service pipes, stop-cocks, and apparatus, up to and including the tap in the street main, in good repair.

4. No hydrant will be permitted on the sidewalk, in an open area, or in any other locality accessible to persons other than the subscriber, and neither hydrants nor other apparatus must be allowed to run when not in actual use.

5. Officers and employees of the company shall have access at all reasonable hours to all parts of any premises where attachments to the works have been made, to inspect the condition and use of the plumbing.

6. Waste of water is punishable by fine or imprisonment under city ordinance. The company reserves the right to shut off the supply to any premises where water is found running to waste, and to forfeit the amount of payment.

7. Where two or more parties or premises are supplied from the same service pipe, the failure on the part of any of said parties to comply with the rules of the company shall warrant the company in withholding a supply of water through said service pipe, without any liability whatever.

8. It is agreed that for violation of any of the above rules the company may shut off the supply of water and the amount paid for same shall be forfeited.

ALBERT BALDWIN, *President.*

47 NEW ORLEANS WATER WORKS COMPANY,
No. 2013. NEW ORLEANS, *October 1st*, 1881.

Received of Mr. A. A. Maginnis & Sons three hundred dollars for a supply of water at No. 85 & 87 Commerce street from date — 30th September, 1882.

To be used in conformity to the regulations printed on the reverse hereof.

$30-.00 for cotton-seed oil m'y.

A. F. AVEGNO, *Collector.*

Rules, &c., printed on reverse.

Rules, Regulations, and Penalties Regarding the Use of Water.

1. No subscriber will be allowed to supply water to any person or to use it for any purpose not specified in his permit. For an infraction of this rule the supply will be cut off and the amount of payment forfeited.

2. No addition to or alteration whatever in or about any conduit pipe or water-cock shall be made or caused to be made by persons taking the water without notice thereof being previously given to and permission had, in writing, from the office of the works.

3. Subscribers must keep their service pipes, stop-cocks, and apparatus, including the tap in the street, in good repair, and
48 shall prevent all waste of water.

4. No hydrant will be permitted on the sidewalk or in an open area accessible to persons other than the subscriber; and neither hydrants nor other apparatus must be allowed to run when not in actual use.

5. Officers and employees of the works shall have access at all reasonable hours to all parts of any premises where attachments to the works have been made, to inspect the condition and use of the plumbing.

6. Applications for water must state fully and truly all purposes for which it is required; and at all times parties must fully and frankly and without concealment answer all questions relating to its consumption. In case of misrepresentation the supply will be cut off and the rent paid be forfeited.

7. Should the water be found turned on in any hydrant or attachment where it had been shut off the ferrule shall be drawn or the pipe cut, and it shall not be restored until the party had paid all bills due and charges for drawing and restoring ferrule or cutting and repairing pipe. Where a stop-cock is closed for any abuse or violation of regulations it shall only be opened on the payment of one dollar each for expense of closing and reopening.

8. A water permit may be transferred from one premises to another on application at the office and payment of any difference in rate and one dollar extra for expense of opening and closing.

EDWARD TOBY, *President.*

49 NEW ORLEANS WATER WORKS COMPANY,

No. 651. NEW ORLEANS, *October* 1*st*, 1880.

Received of Mr. A. A. Maginnis' Sons three hundred dollars for a supply of water at No. 85 to — Commerce street from date to 30th September, 1881.

To be used in conformity to the regulations printed and exposed to view in the office of the New Orleans Water Works Company.

$300 for cotton-seed oil & soap m'y.

A. F. AVEGNO, *Collector.*

For any failure in the payment of bills due or for a violation of any of the rules or regulations of the works, which will be exposed

to view at all times in the office, the water will be shut off and payment already made will be forfeited.

Water is transferable from one house to another.

Water rents are payable annually in advance on the 1st of October.

Quiconque enfreindra les reglements qui sont publies et exposés aux regards du public aux bureaux de la Compagnie, ou quiconque refusera de payer son compte, sera privé de l'eau, et en outre perdra le montant qui aura été payé.

L'eau est transférable d'une maison á l'autre.

L'eau sera payée d'avance pour l'année l'année commencant le 1 ler Octobre.

50 NEW ORLEANS WATER WORKS COMPANY,

No. 2269. NEW ORLEANS, *October 1st*, 1879.

Received of Mr. A. A. Maginnis' Sons three hundred dollars for a supply of water at No. 85 to — Commerce street from date to 30th September, 1880.

To be used in conformity to the regulations printed and exposed to view in the office of the New Orleans Water Works Company.

$300 for cotton-seed oil & soap man'y.

T. CENSEL, *Collector*.

For any failure in the payment of bills due or for a violation of any of the rules or regulations of the works, which will be exposed to view at all times in the office, the water will be shut off and payment already made will be forfeited.

Water is transferable from one house to another.

Water rents are payable annually in advance on the 1st of October.

Quiconque enfreindra les reglements qui sont publies et exposés aux regards du public aux bureaux de la Compagnie, ou quiconque refusera de payer son compte, sera privé de l'eau, et en outre perdra le montant qui aura été payé.

L'eau est transférable d'une maison á l'autre.

L'eau sera payée d'avance pour l'année l'année commencant le 1 ler Octobre.

51 CITY WATER WORKS,

No. 1181. NEW ORLEANS, *October 1st*, 1877.

Received of Mr. A. A. McGinnis & Sons three hundred dollars for a supply of water at No. 85, 87 Commerce street from date to 30th September, 1878.

To be used in conformity to the regulations printed and exposed to view in the office of the water works.

$300.00 for cotton-seed mill.

Rec'd Dec. 14th, '77.

JOHN H. HOLMES,
Assessor and Collector.

[Written across the face:] James D. Edwards, administrator W. W.

For any failure in the payment of bills due or for a violation of any of the rules or regulations of the works, which will be exposed to view at all times in the office, the water will be shut off and payment already made will be forfeited.

Water is transferable from one house to another.

Water rents are payable annually in advance on the 1st of October.

Quiconque enfreindra les reglements qui sont publies et exposés aux regards du public aux bureaux de la Compagnie, ou quiconque refusera de payer son compte, sera privé de l'eau, et en outre perdra le montant qui aura été payé.

L'eau est transférable d'une maison á l'autre.

L'eau sera payée d'avance pour l'année l'année commencant le 1 ler Octobre.

52 NEW ORLEANS WATER WORKS COMPANY,

No. 2021. NEW ORLEANS, *October 1st*, 1878.

Received of Mr. A. A. Maginnis' Sons three hundred dollars for a supply of water at No. 85 to — Commerce street from date to 30th September, 1879.

To be used in conformity to the regulations printed and exposed to view in the office of the New Orleans Water Works Company.

$300 for soap manufactory.

Paid Feb. 15, '79.

JOHN H. HOLMES, *Collector.*

For any failure in the payment of bills due or for a violation of any of the rules or regulations of the works, which will be exposed to view at all times in the office, the water will be shut off and payment already made will be forfeited.

Water is transferable from one house to another.

Water rents are payable annually in advance on the 1st of October.

Quiconque enfreindra les reglements qui sont publies et exposés aux regards du public aux bureaux de la Compagnie, ou quiconque refusera de payer son compte, sera privé de l'eau, et en outre perdra le montant qui aura été payé.

L'eau est transférable d'une maison á l'autre.

L'eau sera payée d'avance pour l'année l'année commencant le 1 ler Octobre.

53 *Petition.*

To the hon. civil district court for the parish of Orleans:

The petition of the New Orleans Water Works Company, of the parish of Orleans, a company chartered by legislative enactment, respectfully represents—

That A. A. Maginnis' Sons, a firm composed of A. A. Maginnis and J. N. Maginnis, of New Orleans, are indebted unto petitioner in the sum of five hundred dollars, as per annexed bill, made a part hereof, to wit, for water furnished and to be furnished from October 1st, 1882, for the term of twelve months from said date at their

place of business, Nos. 85–87 Commerce street, in said city; that said sum, according to the rules and regulations of said company as communicated at the time to said parties, is due from the first of October, 1882; that the supply of water furnished by petitioner to said parties, tested under the stipulations of the charter aforesaid, is worth considerably more than five hundred dollars, which petitioner claims on a *quantum meriut*.

Wherefore petitioner prays that A. A. Maginnis and J. N. Maginnis be cited and that they be condemned to pay unto petitioner the sum of five hundred dollars, with legal interest from judicial demand; prays for general relief, and as in duty bound, etc.

(Signed) ALBERT VOORHIES, *Att'y.*

54 *Supplemental Petition.*

To the hon. civil district court for the parish of Orleans:

The amended or supplemental petition of the New Orleans Water Works Co. respectfully represents—

That, reiterating all the allegations contained in their original petition, petitioners aver that from October 1st, 1882, until the present time the said firm of A. A. Maginnis' Sons have already received and drawn from petitioners' water works at their aforesaid place of business more than five hundred dollars' worth of water for their consumption; that the probable consumption of water from this date to the end of the year by said defendants will be the additional sum of two hundred and fifty dollars should they continue their business operations as in the past; that petitioners' claim in the premises is a *quantum meriut* and strictly in accordance with the provisions of the charter of said company, No. 33 of extra session of 1877 and No. 43 of act of 1878, which are annexed as a part hereof; prays as in original petition and that said defendants be cited and condemned to pay petitioners the sum of five hundred dollars, with legal interest, reserving the right to claim said supply in a separate suit.

And for general relief, etc.

(Signed) ALBERT VOORHIES, *Att'y.*

55 Civil District Court.

Copy of Petition. No. 20112.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of the New Orleans Water Works Company, a corporation duly created and existing under and by virtue of the laws of the State of Louisiana, having its domicile in the city of New Orleans, with respect shows—

That the Maginnis Soap and Oil Works, a corporation duly created under the laws of this State, having its domicile also in the city of New Orleans, in this State, whereof J. H. Maginnis is president,

is justly indebted to your petitioner in the full sum of sixteen hundred dollars ($1,600) for that—

Your petitioner, being engaged in and authorized by law to furnish water supply to and for the inhabitants of the city of New Orleans under and by virtue of the terms of its charter, did, during the time between the 1st day of October, 1882, and the first day of October, 1883, furnish and supply, at the request of the defendant, a full water supply for the factory of the said defendant, situated in the city of New Orleans, for the use of said defendant in said factory for purposes of steam-power and manufacturing carried on in said factory; that by error in estimating the quantity of water used and delivered in said premises your petitioner demanded for said
56 year only the sum of five hundred dollars ($500), much below the real value of said water so delivered on said premises and consumed by said defendant thereon.

That the defendant also has adjoining its said premises a stable, where are stabled and kept a large amount of live stock, which said premises your petitioner also supplied — water from the 1st day of October, 1882, until the 1st day of October, 1884, from which your petitioner is entitled to the sum of fifty dollars ($50) per annum or the sum of one hundred dollars ($100) for said term of two years aforesaid.

That before the 1st of October, 1883, your petitioner, having discovered its error in underestimating the amount of water used on said premises, caused a survey and estimate of the true and actual amount of water delivered on said premises of said defendant and ascertained that the supply of water used on said premises was of a value exceeding the sum of one thousand dollars ($1,000) per annum, and thereupon demanded the sum of one thousand dollars ($1,000) for the price of water consumed in said premises for the year commencing October 1st, 1883, and ending on October 1st, 1884, which was the due and lawful price therefor; that the defendant, although it used the water of plaintiff for and during the entire period or year last aforesaid, refused to pay for the same and is still indebted to your petitioner therefor. Petitioner avers amicable demand and refusal to pay.

Wherefore, the premises considered, your petitioner prays that the defendant may be duly cited to answer this demand, and that after due proceedings had the defendant be condemned to pay your
57 petitioner the full sum of sixteen hundred dollars ($1,600), with interest from judicial demand, with all costs; and will ever pray, &c.

(Signed) J. B. BECKWITH,
Att'y for Pl'ff.

A true copy.

[SEAL.] W. J. McDONNELL, *D'y Cl'k.*

Citation.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

N. O. WATER WORKS CO.
versus
THE MAGINNIS SOAP AND OIL WORKS. } No. 20112.

The Maginnis Soap and Oil Works, through its president, J. H. Maginnis, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

58 Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 9th day of February, in the year of our Lord 1887.

[SEAL.] W. J. McDONNELL,
Deputy Clerk.

NEW ORLEANS, *Oct.* 4, 1884.

Messrs. Maginnis' Sons, city.

GENT'N: Please take notice that the supply of water to your oil mills and soap factory and stable by this company ceases from to-day and until arrangements can be concluded between us for its renewal.

Resp'y, L. H. GARDNER, *Sup't.*

NEW ORLEANS, *Nov.* 22, 1882.

Messrs. A. A. Maginnis' Sons.

GENT'N: Your favor of 21st inst. is rec'd, covering check $700.00. For the reasons given in my communication of 3d inst. this amount cannot be accepted as you request.

Referring you hereto, I return your c'k herein, asking for one for $900 instead, if you please.

Yours resp'y, L. H. GARDNER,
Sec'y & Treas'r.

59 NEW ORLEANS, *Feb'y 3rd*, 1887.

Mr. Chas. B. Maginnis, sec't'y Maginnis Oil & Soap Works, city.

DEAR SIR: I beg to inform you, in reply to yours of Jan'y 4, '87, that at a meeting of the board of directors of this company, held yesterday, your proposition to pay $300 per an. for past supply of water and $150 per an. for future supply was rejected.

Respectfully, R. L. MACMURDO, *Sec't'y.*

(Copy.)

JAN'Y 4TH, 1887.

L. H. Gardner, Esq., manager N. O. City Water Works Company, city.

DEAR SIR: Your communication without date was received a few days ago. In reply, will state that we will be pleased to pay your bills due at the same rate we had previously been paying, viz., $300.00 per annum, and, if satisfactory to your company, we will further state that as there are times when the river is quite low, which causes us some little inconvenience, we will pay $150.00
60 per annum if your company sees fit to turn the water on, to be used at different times when we may need it. Hoping this will be satisfactory and that you will let us hear from you on the subject soon, we remain,

Yours respectfully,
(Signed) CHAS. B. MAGINNIS, *Sec't'y.*

Water-works bills paid as follows:

Jan'y 27th, 1873, up to	Sep. 30th,	1873	400 00
Nov. 8th, 1873,	do.	1874	400 00
May 17th, 1875,	do.	1875	300 00
Oct. 8th, 1875,	do.	1876	300 00
Dec. 27th, 1876,	do.	1877	300 00
Dec. 10th, 1877,	do.	1878	300 00
Feb'y 14th, 1879,	do.	1879	300 00
March 5th, 1880,	do.	1880	300 00
Oct. 26th, 1880,	do.	1881	300 00
Dec. 17th, 1881,	do.	1882	300 00

Bills in dispute:

Say from Sept. 30th, 1882, to Sept. 30, 1883.
" " " 30, 1883, " 30th, 1884.

NEW ORLEANS, *Nov. 21st*, 1882.

New Orleans Water Works Company, city.

61 GENTLEMEN: Enclosed please find our certified check for seven hundred dollars, $400.00 of which is for water supplied for our cotton factory and $300.00 for the oil works. The former is the rate now established by you, greatly in excess of what we think is proper. The latter is the rate which we have been paying for many years for the same quantity of water and which we paid last year to your company.

You will please signify your receipt thereof and forward us proper vouchers at your earliest convenience.

Yours respectfully,
(S'g'd) A. A. MAGINNIS' SONS.

EXHIBIT CHAIN OF TITLES FOR PROPERTY OWNED BY MAGINNIS OIL & SOAP WORKS. Offered by Defendant and Filed 11 June, 1887.

Chain of Titles to Property Belonging to the Maginnis Oil & Soap Works.

The Maginnis Oil & Soap Works acquired from Mistress Elizabeth Jane Maginnis, widow of the late Arthur Ambrose Maginnis, and her children the property hereinbelow described:

First. Seven certain lots of ground, together with the buildings and improvements thereon and all rights, ways, and privi-
62 leges and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city in the square bounded by Peters (late New Levee), Commerce, Julia, and St. Joseph streets, designated by the Nos. 1, 2, 3, 4, 5, 6, and 7, and measuring as follows:

Lot No. 1 forms the corner of Julia and Common streets and measures twenty-eight feet three inches front on said Julia street by sixty-four feet nine inches and seven lines in depth and front on Commerce street and sixty-two feet eleven inches and seven lines in depth on the side line of lot No. 2 and thirteen feet two inches and four lines in width in the rear.

Lot No. 2 measures twenty-one feet ten inches front on Julia street by sixty-two feet eleven inches and seven lines in depth between parallel lines.

Lot No. 3 measures twenty-two feet one inch front on Julia street by sixty-two feet eleven inches seven lines in depth between parallel lines.

Lot No. 4 measures twenty-one feet eleven inches and four lines front on Julia street by sixty-two feet eleven inches and seven lines in depth between parallel lines.

Lot No. 5 measures twenty-two feet two inches and five lines front on Julia street by sixty-two feet seven inches and seven lines in depth.

Lot No. 6 measures twenty-one feet and ten inches front on Julia street by sixty-two feet eleven inches and seven lines in depth; and said
63 Lot No. 7 measures twenty-one feet eleven inches front on Julia street by sixty-two feet eleven inches in depth.

Second. A certain piece or portion of ground, together with the buildings and improvements thereon, including the machinery, presses, apparatus, fixtures, and appurtenances of the oil & soap work- thereon erected, and all rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate, lying, and being in the first district of this city, in the square bounded by Tchoupitoulas, Julia, Commerce, and St. Joseph streets, and measuring two hundred and thirteen feet five inches and four lines front on Julia street, one hundred and sixty-one feet nine inches front on Commerce street, one hundred and sixty feet five inches and nine lines front on Tchoupitoulas street by two hundred

and twenty feet nine inches in width on the side line nearest St. Joseph street.

Third. Three certain lots of ground, together with the buildings and improvements thereon and all rights, ways, and privileges and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city (in that part thereof now or formerly styled Faubourg St. Mary), in the square bounded by Tchoupitoulas, St. Joseph, Commerce, and Julia streets, and designated as lots Nos. 202, 206, and 208 on a plan drawn by C. A. Hedin, architect and civil engineer, under date of January 20th, 1848, deposited for reference in the office of Charles Boudousquie, late a notary in this city. Said lot No. 202 measures twenty-seven feet five inches and a half line front on Tchoupitoulas street by a depth of eighty-
64 eight feet ten inches and five lines between parallel line-, and said lots Nos. 206 and 208 measure each, more or less, twenty-seven feet five inches and ten and a half lines front on said Tchoupitoulas street by eighty-eight feet two inches and four lines in depth between parallel lines, all American measure.

Title registered in Conveyance Book 120, folio 22.

NOTE.—The proceedings in the succession of Arthur Ambrose Maginnis, Sr., No. 8517 in the docket of the civil district court, show that all of the above property was for convenience sake purchased in the name of John H. and Arthur A. Maginnis, Jr., but really belonged to Mistress Elizabeth J. Maginnis and all of his children, including John and Arthur A. Maginnis, Jr.

Chain of title to the property first above mentioned, namely, the seven lots of ground in square bounded by Peters, Commerce, Julia, and St. Joseph streets and numbered 1, 2, 3, 4, 5, 6, and 7.

John H. Maginnis and Arthur A. Maginnis, Jr., from the widow and heirs of William H. Palmer, lots 6 and 7, above described, by act before Andrew Hero, Jr., notary public, March 1st, 1876.

Title registered in Conveyance Book No. 106, folio 333.

John H. Maginnis and Arthur A. Maginnis from the New Orleans Savings Institution, by act before Theodore Guyol, 25th November, 1875, purchased lots 1, 2, 3, 4, and 5.

Title registered in Conveyance Book 107, folio 173.

65 William H. Palmer from T. R. Brady, by act of partition before W. J. Castel, notary public, 15th August, 1867, acquired lots 6 and 7.

Title registered in Conveyance Book 93, folio 380.

New Orleans Savings Institution from T. R. Brady, at a public sale made by the civil sheriff of the parish of Orleans on the 9th of January, 1875, under writ of seizure and sale issued in the suit of The New Orleans Savings Institution *vs.* T. R. Brady, No. 26257 of the superior district court, lots 1, 2, 3, 4, and 5.

Title registered in Conveyance Book 103, folios 978-979.

W. H. Palmer and T. R. Brady from the city of Baltimore, by act before H. B. Cenas, notary public, of the 16th April, 1859, acquired lots 1, 2, 3, 4, 5, 6, and 7.

Title registered in Conveyance Book 79, folio 46.

John McDonogh to the city of Baltimore. John McDonogh bequeathed all of his real estate to the city of Baltimore, the city of New Orleans, and other persons, and the city of Baltimore became possessed of the lots above by a partition suit, known as No. 11578 of the docket of the fifth district court and entitled City of New Orleans *vs.* The City of Baltimore *et als.*, the judgment of partition being dated June 26th, 1857.

John McDonogh acquired from James Pitot and Pierre Derbigny by act before Huguys Levergne, notary public, 8th December, 1823, and from Guy Duplantier by act before L. T. Caire, notary public, 26th January, 1828.

66 Chain of title to the piece of property secondly described above, viz., forming the corner of Commerce and Julia streets.

John H. Maginnis from Arthur A. Maginnis by act before A. Hero, Jr., notary public, of the 18th November, 1872, an undivided half of the above property.

Title registered in Conveyance Book 102, folio 608.

A. A. Maginnis, Jr., from William Golding, Jr., by act before A. Hero, Jr., notary public, of the 10th October, 1870.

Title registered in Conveyance Book 98, folios 253–254.

William Golding, Jr., from H. W. Palfrey by act before Adolph Boudousquie, notary public, 3rd March, 1864.

Title registered in Conveyance Book 86, folio 640.

Henry W. Palfrey from the Citizens' Bank, a portion of the above property, by act before Adolph Boudousquie, notary public, 25th May, 1858.

Title registered in Conveyance Book 76, folio 37.

Henry W. Palfrey from F. Valentine, a portion of the above property, by act before Adolph Boudouskie, notary public, 3rd September, 1852.

Title registered in Conveyance Book 58, folio 105.

Henry W. Palfrey from Mrs. Maria J. Palfrey, wife of Jules A. Blanc, duly authorized, the remaining portion of the above property, by act before Theodore Guyol, notary public, on the 20th
67 February, 1861.

The Citizens' Bank acquired the piece of property sold to Palfrey from I. W. Smith on the 10th April, 1858, at the public sale made by E. T. Parker, sheriff of the parish of Orleans, under a writ of seizure and sale issued in the suit No. 13654, entitled Citizens' Bank *vs.* Isaac W. Smith.

F. Valentine acquired from the Citizens' Bank, on the 4th of May, 1849, the piece of property sold by him to Palfrey by act before Charles Boudousquie, notary public.

Title registered in Conveyance Book 47, folio 536.

Maria J. Palfrey, wife of Jules A. Blanc and widow by first marriage of Chauncey C. Williams, acquired the piece of property sold by her to H. W. Palfrey by judgment of the second district court

dated 3rd March, 1856, adjudicating to her the said property in the proceedings duly had in the succession of her husband, Chauncey C. Williams.

Chauncey C. Williams acquired his title to the above property by act before Adolph Boudousquie, from the Citizen's Bank, on the 24th of June, 1852.

The Citizens' Bank acquired title to the above property from Adelaide Castree, wife of E. E. Parker, at a public sale, on the 18th of July, 1848, made by the sheriff of the parish of Orleans under a writ of *fieri facias* issued by the 5th district court in the suit
68 of the Citizens' Bank *vs.* Mrs. A. Castree, wife of E. E. Parker.

Chain of title to the property thirdly described as lots Nos. 202, 206, and 208, in the square bounded by Tchoupitoulas, St. Joseph, Commerce, and Julia.

John H. Maginnis and Arthur A. Maginnis, Jr., acquired from Robert Bradley by act before Andrew Hero, Jr., notary public, 8th November, 1882, lots Nos. 206 and 208.

Title registered in Conveyance Book 120, folio 14.

John H. and Arthur A. Maginnis, Jr., acquired lot No. 202 from the Citizens' Bank by act before Edgar Grimard, notary public, 9th May, 1883.

Title registered in Conveyance Book 119, folio 95.

Robert Bradley acquired lots Nos. 206 and 208 from the Citizens' Bank by act before F. Grimard, notary public, 26th May, 1881.

Title registered in Conveyance Book 115, folio 430.

The Citizens' Bank acquired lot No. 202 from Thomas Malloy, May 6th, 1882, at a sheriff's sale under writ of seizure and sale issued in the suit of The Citizens' Bank *vs.* Thomas Malloy, No. 5546 on the docket of the civil district court.

Title registered in Conveyance Book 116, folio 325.

The Citizens' Bank acquired lots Nos. 206 and 208 from
69 John Dunn, Mary Ann Dunn, and Andrew J. Dunn at a sheriff's sale made on the 22 of December, 1879, under a writ of seizure and sale issued in the suit of The Citizens' Bank *vs.* John — and others, No. 10210 on the docket of the 5th district court.

Title registered in Conveyance Book 102, folios 416 & 417.

Andrew J. and Mary A. Dunn obtained their interest by act of partition before N. J. Castiel, notary public, December 24th, 1876.

Title registered in Conveyance Book 104, folio 567.

Thomas Malloy acquired lot No. 202 from the Citizens' Bank by act before F. Grima, notary public, on the 22nd of December, 1874.

Title registered in Conveyance Book 103, folio 555.

John Dunn acquired lots Nos. 206 and 208 from Pierre Passebon by act before Charles Boudousquie, notary public, February 10th, 1848.

Title registered in Conveyance Book 45, folio 377.

Citizens' Bank acquired lot No. 202 from H. Waldrecht at a sheriff's sale on the 21st day of October, 1874, made under a writ of seizure and sale in the case of The Citizens' Bank *vs.* Waldrecht, No. 26068 of the docket.

Title registered in Deed Book "A," folio 241, and in Conveyance Book No. 105, folio 527.

Henry Waldrecht acquired from James W. Breedlove lot No. 202 at a sale made on the 9th day of March, 1866, by the sheriff
70 of the parish of Orleans under a writ of seizure and sale issued in the suit of The Citizens' Bank *vs.* Breedlove, No. 17672 on the docket.

J. W. Breedlove acquired lot No. 202 from Pierre Passebon by act before Adolph Mazureau, notary public, on the 6th day of May, 1853.

Pierre Passebon acquired lots Nos. 206 and 208 and 202 from the Citizens' Bank on the 14th day of October, 1847, by act before Charles Boudousquie, notary public.

Title registered in Conveyance Book 45, folio 178.

EXHIBIT AFFIDAVIT. Offered by Defendant and Filed 11 June, 1887.

U. S. Circuit Court.

NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL & SOAP WORKS. } No. 11565.

John H. Maginnis, being duly sworn, deposes and says that he is the president of the Maginnis Oil & Soap Works, a corporation of this parish, established on the 8th day of May, 1883.

That he was a member of the firm of A. A. Maginnis' Sons, composed of himself and A. A. Maginnis, of this city.

That on the 10th day of October, 1870, the said firm of A. A. Maginnis' Sons purchased the real estate contiguous to the
71 river on which their factory was erected.

That they and their predecessor in said business were required to use and did use steam-power in the conduct thereof, and for the purpose of making steam water was necessary, and same was supplied by the water works Co. when a corporation, and by the city of New Orleans when the rights of said company reverted to said city, at an annual cost not exceeding three hundred dollars, which sum was paid during the period of time of eight years.

That — day of —— the complainants herein notified your affiant's firm, and subsequently the defendant herein, that they would increase their price for the use of the same amount of water as had been used for the period of time aforesaid per annum to the sum of five hundred dollars per annum, and again notified them they would demand one thousand dollars per annum.

That said notice so received was not regarded as being serious, or, if serious, that same was in violation of every principle of equity, law, and good morals, an imposition upon defendant, and beyond the power and authority of complainant.

That said complainant thereafter, viz., on the — day of —— 18—, again notified defendant that if it did not pay the amount stipulated,

as above set forth, that said complainant would exclude defendant from the use of water for its factory through its pipes and mains from the Mississippi river, and did carry said threat into execution thereafter because this defendant was not subservient to the views of complainant, but had notified complainants it would con-
72 test with complainants the value of the use of the water of complainant for its said factory through the courts of the State. Notwithstanding such notice and such fact, said complainants did actually exclude from the use of defendant the use of the water of the Mississippi river in its said factory.

That thereafter your affiant, for defendant, being obliged to continue its business, carry on its contracts and avoid heavy and serious losses in event it did not so act, obtained the permission of the city of New Orleans, at a great expense in labor and material, its factory being then and now located contiguous to the river, to lay pipes and mains leading to its factory at its own expense and for its own benefit, since which time affiant's said company has made use of the public navigable stream of water known as the Mississippi river, under an ordinance of the city of New Orleans, the proper police authority having authority to grant such right, which said right was so granted by said city and complied with in all respects by affiant's said company at its own expense without injury or detriment to the public highways of said city, without injury or detriment to the complainants, and at the entire cost and expense of defendant, for its own use and for its own benefit, necessary and proper for its business.

Deponent further says that the cost of the pipes and mains leading from its factory to the Mississippi river amount to the sum of forty-two hundred and fifty-eight dollars.

That he is informed, believes, and so says, the same without repair will exist and continue for an indefinite period of years.
73 That the annual cost of the water so supplied through said pipes and mains to the factory of your affiant will not exceed fifty dollars per year, and that the action of the complainant herein seeking to close the factory of your affiant, and thereby deprive hundreds of its employees from labor and thereby deprive them of the means of earning their livelihood, until defendant submits to their illegal, unjust, and inequitable charge for the use of such water does not and cannot warrant a court of equity in the relief prayed for by complainant, and that the matter herein as to whether or not an injunction should issue should be deferred until a final trial upon the merits of the case.

Affiant further says complainant brought its suit at law in the State court for the use of such water at five hundred dollars per annum, and after issue joined brought another action also in the State court, ignoring the pendency of its first suit, claiming one thousand dollars per annum, both of which suits were pending prior to this action being filed and are still pending and undetermined.

(Signed) J. H. MAGINNIS.

Sworn to and subscribed before the undersigned notary, at New Orleans, this June 10, 1887, as witness my hand and seal.

[SEAL.] (Signed) ANDREW HERO, *Not. Pub.*

74 EXHIBIT AFFIDAVIT. Offered by Defendant and Filed 11 June, 1887.

Personally came and appeared before me the undersigned authority, Andrew Hero, Jr., of the city of New Orleans, who, being duly sworn, deposes and says that he is now and has been for more than twenty years last past a notary public in and for the parish of Orleans, and was for a period of eight years custodian of the notarial records for the parish of Orleans; has been in the most active and diligent practice in his said profession during said period of time of the twenty-odd years.

That he is well versed with the properties in the parish of Orleans, from his own observation and from his knowledge derived by him as notary and custodian as aforesaid.

That he was born and raised in the city of New Orleans, and has diligently and actively engaged himself in ascertaining the matters and things hereinafter referred to.

And he now says that the property on Julia street, bounded by Tchoupitoulas, Julia, Peters (late New Levee), and St. Joseph streets, on which has been erected a factory, machinery, and apparatus of the Maginnis Oil & Soap Works, is part of the batture of the city of New Orleans.

That the same was acquired and owned at the time the rights claimed herein by the New Orleans Water Works Company for years in the year 1833 as batture property, the front thereof being the Mississippi river at high water.

That the right of alluvion was retained by the vendors of said property at said date.

75 That the same was open, public, and contiguous to the river, without any private property intervening between the front thereof and said river, until the year 1852, when, by reason of transfers and rights acquired by the city of New Orleans, sufficient batture having formed in front of the property now known as the Maginnis Oil & Soap Works, same was disposed of by said city of New Orleans and then and there became private property, but did not deprive the said Maginnis Oil and Soap Works of its proximity to said river as contiguous thereto.

That your affiant refers for further particulars of and concerning the subject-matter aforesaid to acts of sales marked Exhibit —, hereto attached, and to *be* a copy of the plan marked Exhibit —, likewise hereto attached, showing the matters and things hereinbefore stated more fully and in detail by metes and bounds.

(Signed) ANDREW HERO.

Sworn to and subscribed before me this 11th day of June, 1887.

[SEAL.] (Signed) F. KIRCHNER, *Not. Pub.*

EXHIBIT DEED OF SALE. Offered by Defendant and Filed 11 June, 1887.

85.

FEBRUARY 12TH, 1834.

Sale of Property by the Estate of Louis Duririer to Adele Castrée.

76 Be it known that on this day, before me, Theodore Seghers, notary public, duly commissioned and sworn, for the city and parish of New Orleans, State of Louisiana, and in the presence of the undersigned witnesses—

Personally appeared Marc Lafitte, residing in this city, acting in his capacity as testamentary executor of the late Louise Duririer, free woman of colour; which appearer has stated that by virtue of an order of the court of probate in this city, bearing the date of the tenth day of December last past, he has caused the property belonging to the estate of said deceased to be sold at public vendue — the register of wills on the eleventh January last at Hettlett's Exchange, in this city, after the usual publications, and that at the said sale the hereinafter-described lot of ground was adjudicated to Jasper Strong for the account of Adeline Castreé, as the whole more fully appears from the process verbal of sale by the register of wills, which remains hereunto annexed for reference.

Wherefore the said executor does by these presents sell, bargain, and convey, in conformity with said public sale, and *will* full and complete warranty of the title against all claims, evictions, and encumbrances whatsoever—

Unto the said Adeline Castrée, here present, residing in this city, and accepting for herself, her heirs and assigns—

A lot of ground situate in the suburb St. Mary of this city, in Tchoupitoulas street, in the square encompassed by Tchoupitoulas, Julia, Commerce, and St. Joseph streets, said lot measuring,
77 by American admeasurement, thirty-two feet one inch and a quarter front on Tchoupitoulas street by one hundred and twenty feet deep and thirty-two feet two inches in the rear, bounded on both sides by the property of Edward E. Parker, said lot being designated as number three on the plan drawn on the eleventh December last by Allon d'Hemecourt, deputy city surveyor, and deposited in this office for reference.

The above lot is part of a large tract of land which belonged to the deceased Louise Duririer by virtue of the compromise entered into by her and others with the heirs of Bertrand Gravier, per act executed before H. Lavergne, then a notary public, on the fourteenth day of March, eighteen hundred and twenty-three, and according to the certificate of the recorder of mortgages, bearing the date the eleventh December last, on record in the court of probates, said lot is free from mortgage.

This sale is made for and in consideration of the sum of seven thousand dollars, being the price for which said lot was adjudicated to the purchaser, payable one-fifth cash and the balance at one and two years' credit from the day of the public sale in notes satis-

factorily endorsed and bearing mortgage on said lot. In compliance with said terms the purchaser has paid a sum of fourteen hundred dollars in cash to the executor, who acknowledges receipt thereof, and for the balance of the price she has granted her two promissory notes, each for two thousand eight hundred dollars, to the order of and endorsed by Edward E. Parker, bearing date of the eleven-
78 th January last, and payable, respectively, one and two years after date. Said notes are countersigned *ne varietur* by me, the notary, in order to identify them herewith, and are delivered to the said executor, who likewise acknowledges receipt thereof; and for the purpose of security at their maturity the payment of said two notes, amounting together to five thousand and six hundred dollars special mortgage on the premises, is reserved by the vendor and granted by the purchaser.

Now the said executor transfers unto the said purchaser all the said Louise Duririer's right and title in and to the said lot, with subrogation to all the rights of warranty to which said deceased might be entitled concerning the same; to have and to hold said property unto the purchaser, her heirs and assigns forever.

Done and passed at New Orleans, in my office, on the twelfth day of February, in the year one thousand eight hundred and thirty-four, in presence of Victor Seghers and Honore Lavigne, both of this city, witnesses, who have signed with the parties and me, notary.

(Original signed) McLAFITTE.
ADE CASTREE.
VICTOR SEGHERS.
H'RE LAVIGNE.
THRE. SEGHERS,
Notary Public.

STATE OF LOUISIANA, }
City of New Orleans. }

I hereby certify the foregoing to be a true and correct copy of the original act on file and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my seal of office this 11th day of June, A. D. 1887.

[SEAL.] (Signed) M. VOORHIES,
Custodian Notarial Records.

79 & 80 *Hearing and Continuance.*

Extract from the Minute Book.

SATURDAY, *June* 11, 1887.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

NEW ORLEANS WATER WORKS COMPANY
vs.
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

This cause came on for hearing on the application of the complainant for an injunction *pendente lite*.

Present: J. R. Beckwith, for complainant.
W. S. Benedict, for defendant.

And, after hearing arguments from counsel for the respective parties in part, the court ordered the cause to go over until Monday, the 13th instant, at 2 p. m.

Hearing and Submission.

81 Extract from the Minute Book, April Term, 1887.

NEW ORLEANS, MONDAY, *June 13th*, 1887.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

This cause, as continued from Saturday, the 11th instant, came on this day further to be heard on the application of the complainant for an injunction *pendente lite;* and, after hearing counsel, the cause was submitted to the court upon the evidence offered, when the court took time to consider.

Decree. Entered and Filed 16th June, 1887.

United States Circuit Court, Eastern District of Louisiana.

NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

82 This cause came on to be heard on the motion of complainant for a writ of injunction *pendente lite*; and the court having heard counsel, as well for complainant as for defendant, and being advised in the premises, it is ordered that an injunction *pendente lite* be allowed, as prayed for in the complainant's bill of complaint, against the Maginnis Oil and Soap Works.

And the defendant having suggested that it fears that the complainant may demand exorbitant rates of charges for water supply, the counsel for the complainant assenting thereto, it is ordered that during the pendency of this action and until the final decree the rate of charge for water to the defendant shall not exceed fifteen cents per one thousand gallons of water delivered on said premises, and that should any difference arise between the parties, either as to the quantity of water consumed by the defendant or the rate charged therefor, either party may apply to the court, upon due and proper notice to the other party, for the adjustment of any disputes or contentions that may arise as to the quantity of water delivered or the price charged therefor.

And the court, upon being advised about and concerning such contention, will make due and proper order in relation thereto.

And that a writ of injunction issue *pendente lite*, as prayed for in the bill of complaint herein.

June 16, 1887.

(Signed) EDWARD C. BILLINGS, *Judge.*

83 *Answer. Filed July 2, 1887.*

U. S. Circuit Court.

NEW ORLEANS WATER WORKS CO. *vs.* MAGINNIS OIL & SOAP WORKS. } No. 11565.

Now comes and appears respondent through John H. Maginnis its president, and for answer to the bill of complaint of complainant, says:

1. That it admits the Commercial Bank was organized as stated, with the rights as set forth, and at the expiration of its charter the city of New Orleans acquired its rights, and thereafter supplied water to the inhabitants of the city of New Orleans.

It is specially denied that the complainant company was organized by an act of the Legislature, at its own instance and under its own volition, but, on the contrary, act No. 33 of 1877 was passed at the instance and request of complainant and by reason of the acts of its officers and employees.

2. It admits the allegations of complainant's bill relative to the assumption of bonds, stocks, &c., by complainant, with a proper deed of the conveyance of the property of the original Commercial Bank by the city of New Orleans, but respondent specially denies the exclusive right of said complainant in the premises, as set forth in said bill.

84 3. Respondent does not deny the right, as alleged by complainant, to increase its stock or borrow money, and has no knowledge of whether it did or not borrow any money, and requires strict proof thereof.

4. Respondent admits that under the acts of the Legislature aforesaid complainant had the right to fix charges for water, provided its net profits should not exceed ten per cent. on its capital stock; but respondent avers that on a proper showing herein it will appear that the net profits of said company far exceeded said ten per cent. on said capital stock, and it specially denies that complainant acted in good faith, and specially denies the city of New Orleans did not observe good faith in the transactions referred to.

5. Respondent avers that the city of New Orleans is entirely contiguous to the Mississippi river; that the oil & soap works which respondent operates is contiguous to the said river, and under and by virtue of said legislative act, under and by virtue of the Constitution of the United States, and under and by virtue of the rights granted to citizens or residents on a navigable stream or contiguous thereto it has the right and power to take for its own use the waters of such navigable stream.

6. It admits the city of New Orleans gave it the right, as the city of New Orleans required of it the duty, to connect its factory with the Mississippi river, to discharge its waste into said river by one set of pipes and acquire fresh water from the river for the use of its factory by another set of pipes, and that, in due accord with law,
85 . right, general rights and principles, and the police ordinance specially obtained for such purpose, it has observed the same.

7. Respondent is not advised and therefore denies the allegations of complainant that they would not have negotiated their bonds, laid their pipes, or have permitted the city of New Orleans to a representation upon their board or have observed the law had it not been that it was to their interest and benefit to do so to the time complained of, viz., the adoption of the constitution of Louisiana of 1879.

8. Respondent specially denies that after the adoption of the said constitution of 1879 the city of New Orleans did any act or granted any right to any of its inhabitants conflicting in any manner or form with any rights or privileges which had been obtained by the complainant from the State of Louisiana through its Legislature by reason of their acts as hereinbefore stated.

9. It is admitted that respondent uses water to furnish its boilers in its business; that in May, 1883, it obtained a right from the city of New Orleans to lay its pipes to the river to obtain such water; denies that the said complainant protested against the same; denies that its premises are not contiguous to the river, and denies that the ordinances of said city granting such right is contrary to the law in any respect; but, on the contrary, respondent avers that for a period of time of over ten years, in the factory of respondent aforesaid, until the year 1882, it was using water necessary in its operations by steam in its factory obtained from the Mississippi river
86 through pipes of the New Orleans Water Works Company, furnished by the different parties or corporations holding or operating such pipes, and the price and sum of three hundred dollars per year was paid therefor to said New Orleans Water Works Co. or those interested therein, which said price and sum was an excessive charge, inasmuch as a fair profit for the amount of water consumed by the boilers of respondent's company at a rate of fifty dollars per year would be an ample and sufficient price in the premises, and that from the year 1882 to the year 1886 the expense to this respondent in the use of water furnished through the pipes of this respondent from the Mississippi river, without injury or damage to the public highways and with the consent of the parochial authorities, has not entailed upon this respondent an expense exceeding twenty-five dollars per year.

And, further answering, this respondent avers that in the year 1882 the complainant herein demanded of your respondent an increase of price for the use of water furnished through their pipes from three hundred dollars to five hundred dollars per year.

That your respondent, although of ample means, knowing the inequity of such a demand, refused to pay the same, and stated to

complainant herein it would not pay the same, but would submit such demand to the judgment of a proper court.

That the complainant thereupon agreed thereto and submitted the same to the judgment of the civil district court for the parish of Orleans under the No. 7906 of the docket, and after issue joined refused to try the same, and said action has been since that
87 time pending and is now pending.

Respondent further avers that, notwithstanding such agreement, the said complainant did thereafter, and in bad faith and in utter disregard of said agreement, with a malicious view and object of forcing this respondent to pay their unjust and illegal demand, notify this respondent that unless such demand was complied with the pipes connecting the street pipes of said water works company with the supply of water furnished respondent would be cut and the supply of water therefrom to the factory of your respondent should be taken away, against which notice this respondent expostulated, expressed its desire to carry out its agreement as before mentioned without avail, and that thereafter, in the delay stated in said notice of said water works company, said pipes were cut and said supply of water was taken from this respondent by complainant, to their great injury and damage and to the injury and damage of their employees, of their contracts, and of all interested in their business, said act being done and had with an illegal and vindictive view on the part of complainant to force respondent to comply with their unreasonable and inequitable demand.

That respondent was thereupon compelled, to avoid a more serious loss, injury, and damage to their business, to obtain a supply of water in such manner and form as they could, and they applied to the city of New Orleans, governing the territory in which their property was situated, to grant them relief in the premises, which request was promptly granted, as alleged in complainant's
88 bill.

Your respondent avers that such relief was so granted at the expense entirely of this respondent, without injury or damage to the said city of New Orleans or its highways, which were opened and closed in the manner and form as required by the police authorities, solely and only by reason of the acts of complainant in the premises.

And respondent further avers that thereafter and to the date of the preliminary injunction herein your respondent made use of the water of the Mississippi river at their own cost and expense in a sum not exceeding twenty-five dollars per annum, said river being about a mile wide and about a hundred feet deep, with a current of about four or five miles an hour, within a distance of twelve hundred to fifteen hundred feet from their factory, without injury or detriment to said river or any of their neighbors adjoining or adjacent to said river, said river being inexhaustible in its supply and capable of furnishing each and every State of the Union and each and every factory of the Union forming the Government of the United States with a water supply.

Respondent further avers that notwithstanding the payment for

more than ten years by this respondent and its predecessor of three hundred dollars per an-um for the use of water from this public navigable stream contiguous to its factory, which it has been found can be obtained at an expense of twenty-five dollars per annum, and notwithstanding the agreement with respondent to
89 contest complainant's increase charge before a court of justice, and notwithstanding their acts in depriving respondent's factory of the use of such water from the pipes of complainant, said complainant did thereafter, to further harass, vex, annoy, and carry into effect their illegal and malicious acts, in said civil district court for the parish of Orleans, institute their action No. 20112 of the docket, claiming that they should be paid one thousand dollars per annum for the use of water so furnished through their pipes to the time complained of, in 1882, when their water supply was thus closed by them as aforesaid.

That in such action this respondent made proper legal dedence, and same is now pending, together with the original action instituted as aforesaid.

That, notwithstanding the aforesaid actions are still pending in court and undetermined, the said complainant herein complain- and says they are entitled to a compensation of two thousand dollars per annum for the use of the water of a public navigable stream, the Mississippi river, for and during the period of time aforesaid, and have obtained from this honorable court an injunction *pendente lite*, preventing and enjoining your respondent at its own expense and sole use from in any manner using the water of said public navigable stream of the United States, so inexhaustless in its power and capacity, and to abstain from in any manner using their own machinery and steam to obtain from said river the necessary quantity of water to supply their machinery with water in the business in which they are engaged, and your respondent says that the
90 act of said complainant is contrary to equity, conscience, and good morals, violative of law, and should not receive the sanction of any court.

10. Respondent denies that it has acted in anywise contrary to the Constitution or the laws of the United States or of this State; knows nothing and admits nothing concerning the special claim of complainant from exemption from taxation or the decision of the courts of Louisiana upon that subject, and claim no right under and by virtue of the constitution of Louisiana of 1879 by reason or virtue whereof or by reason or virtue of any ordinance of the city of New Orleans any alleged rights or claims of complainant are claimed to be infringed, and hence denies the jurisdiction of this honorable court in the premises, said complainant and said respondent being, as alleged and as they exist, legal citizens of the State of Louisiana.

11. Respondents deny that it has used since 1882 any water drawn through pipes of complainant, inasmuch as complainants by its own act deprived respondents of the use of water from complainant since that date; that it is not aware whether or not complainant has or not any pipes from which to supply respondent with water; that it

is immaterial since said date to complainant what quantity of water respondent has used, but when it is averred, as is stated in complainant's bill, that respondent has used more than two thousand dollars' worth of water per year respondents answers and says that the same is untrue and in consonance with the other acts of said complainant as aforesaid, unlawfully and maliciously exercised, to the end and object of compelling respondent, under the alle-
91 gations of complainant's bill, to make use of water from a navigable stream through complainant's pipes at an expense nearly one hundred fold exceeding the actual cost to supply such water, and it specially denies that complainant's contract has been unprofitable, and that the acts of the city of New Orleans are in anywise in fraud of their rights, and they more especially deny any and all equity in their bill.

Wherefore respondent prays judgment in its favor with costs and for all general and equitable relief.

(Signed) W. S. BENEDICT, *Solicitor.*

A. A. Maginnis, being duly sworn, says he is vice-president of the defendant company, and that all facts and allegations in the foregoing bill stated as of his own knowledge are true and correct, and those stated on the information of others he believes to be correct, and that the president of said company is absent from the city and State.

A. A. MAGINNISS,
Acting President.

Sworn to and subscribed before me this day of July 2d, 1887.

(Signed) ANDREW HERO,
[SEAL.] *Not. Public.*

Replication. Filed August 1, 1887.

92 Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL & SOAP CO. } No. 11565.

Replication.

This repliant, saving, &c., and all manner of advantage, &c., to said answer, &c., for replication thereunto saith that it will aver and prove said bill to be certain, sufficient, &c., and that the said answer is untrue, uncertain, insufficient, &c., to be replied unto—

Without this, &c., material or effectual in law to be replied unto, &c., confessed, avoided, or traversed, is true; all of which matters and things this repliant will aver, prove, and maintain as this court shall direct, and pray as in its said bill it hath already prayed.

(Signed) J. R. BECKWITH,
Sol. for Complainant.

Motion and Order Appointing E. R. Hunt Examiner and to Enlarge Time. Entered and Filed November 9, 1887.

93 Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO. *vs.* MAGINNIS OIL AND SOAP WORKS. } No. 11565.

On motion of J. R. Beckwith, solicitor for complainant, and on suggesting to the court that the replication to the answer herein was filed in August last in vacation, and that, there being no standing examiner and no court present, the complainant has been unable to proceed with the testimony and proofs in this cause—

It it ordered that E. R. Hunt, Esq., clerk of this court, be appointed examiner to take the proofs in this cause, and that the time for taking proofs be extended until the rule day in January next.

Motion and Order Extending Time. Entered and Filed 24 *December,* 1887.

Circuit Court of the United States, Eastern District of La.

N. O. WATER WORKS CO. *vs.* MAGINNIS OIL & SOAP WORKS. } No. 11565.

94 On motion of J. R. Beckwith, solicitor for complainant—

It is ordered that the time for taking depositions and proofs in this cause be extended to the third Monday in February, 1888.

Motion to Enlarge Time to Take Testimony. Entered and Filed 12 *March,* 1888.

U. S. Circuit Court.

NEW ORLEANS WATER WORKS CO. *vs.* MAGINNIS OIL & SOAP WORKS. } No. 11565.

On motion of W. S. Benedict, solicitor for respondent, and on suggesting a delay to take testimony herein is about to expire, and that said testimony has not been completed owing to various causes—

It is ordered by the court that an additional delay of one month be allowed to complete said testimony.

Agreement. Filed April 28, 1888.

United States Circuit Court.

95 NEW ORLEANS WATER WORKS CO. *vs.* MAGINNIS OIL & SOAP WORKS. } No. 11565.

It is agreed herein that William Golding, if personally sworn and examined, would swear as follows, viz:

First. That he was consulting engineer for complainant for a certain period of time, and at their request estimated the capacity of the machinery of the various factories of this city, including, among others, that of the "Maginnis Oil & Soap Works," as to the amount of water they could consume for one year if furnished by complainant.

Second. That upon an estimate of such capacity of the boilers and machinery of defendant herein the various charges were made for water differently from those previously paid were made, as stated in complainants' bill of complaint.

Third. That he did not take into consideration nor was he advised of the working time during each year of the defendant's factory, engine, boilers, and machinery, and same did not enter into the computation of charges based upon the capacity of said boilers and machinery as aforesaid.

W. S. BENEDICT,
Sol'r for Respondent.
J. R. BECKWITH,
Sol. for Complainant.

96 *Motion and Order to Set Cause for Trial. Entered and Filed* 7 *May*, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY *vs.* MAGINNIS OIL AND SOAP CO.

On motion of J. R. Beckwith, it is ordered that this cause be fixed for trial on Thursday, the 10th day of May, 1888.

Continuance.

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, THURSDAY, *May 10th*, 1888.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.
Hon. Edward C. Billings, district judge.

N. O. WATER WORKS CO.
v.
MAGINNIS OIL & SOAP WORKS. } No. 11565.

97 It is ordered, on the motion of J. R. Beckwith, solicitor for complainants, that this cause, heretofore set down for trial to-day, be continued to Saturday, the 12th instant, at 11 a. m.

Order: Agreement as to Testimony.

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *May* 12, 1888.

Court met pursuant ro adjournment.
Present: Hon. Don A. Pardee, circuit judge.
Hon. Edward C. Billings, district judge.

NEW ORLEANS WATER WORKS COMPANY
v.
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

By agreement of counsel of this date in open court and upon suggesting that the testimony taken before the examiner in this cause has not been returned into the clerk's office, it is ordered that when said testimony is returned it be filed *nunc pro tunc* as of the present date. It is further ordered that publication of testimony be passed herein upon said testimony hereafter to be received, and that the notes of evidence of the respective parties be also entered *nunc pro tunc* as of the present date.

98 *Order in Regard to Evidence Offered as in Equity Cases.*

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *May* 12, 1888.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.
Hon. Edward C. Billings, district judge.

NEW ORLEANS WATER WORKS COMPANY
v.
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

On application made to the court by the parties hereto it is ordered by the court that the statement and note of evidence required by the rule of the circuit court in equity causes concerning the statement of evidence and note of evidence in a case shall be considered as complied with by the parties offering the evidence and exhibits and proofs, as shown by the report of the examiner, and that the same stand as a compliance with the rule; and thereupon the parties hereto offered in evidence the bill and answers and all exhibits to the bill and answer and all exhibits, depositions, and proofs as shown and contained in the report of the examiner in this cause.

99 *Certificate and Return of Examiner. Filed* 12 *May*, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL & SOAP WORKS. } In Equity. 11565.

To the judges of the circuit court of the United States:

Pursuant to notice given to parties in interest the said parties appeared before me — New Orleans, January 21, 1888.

Present: J. R. Beckwith, solicitor for complainant.
W. S. Benedict, " " defendants.

The solicitor for complainant offered in evidence—

1st. The act No. 33 of the extra session of the Legislature of Louisiana of the year 1877.

2nd. The act No. 43 of the acts of the Legislature of the State of Louisiana for the year 1878, being act approved February 28th, 1878, constituting the charter of the complainant company.

3rd. The act No. 56 of the acts of the Legislature of the State of Louisiana for the year 1884, being an act to incorporate the Commercial Bank of New Orleans, being an act of the Legislature approved April 1, 1883.

100 4th. The notarial act of conveyance by which the Commercial Bank of New Orleans conveyed the water works to the city of New Orleans, an attested copy of which will be furnished and filed.

5th. An attested copy of a notarial act entered into between the city of New Orleans and the New Orleans Water Works Company before Joseph D. Taylor, notary public of the parish of Orleans, on October 3, 1884.

6th. An attested copy of the ordinance of the city of New Orleans, being council series No. 68, approved January 18, 1883.

7th. The ordinance of the city of New Orleans, No. 419, council series, approved September 1, 1883.

8th. The ordinance of the city of New Orleans, council series 148; approved March 1, 1883.

9th. An attested copy (to be furnished) of the notarial act of transfer of the water works from the city of New Orleans to The New Orleans Water Works Company, complainant herein.

10. So much of "plate 1" of Robinson's atlas of the city of New Orleans, of the date of 1883, as is included on the right-hand page of said plate, an attested tracing to be furnished and filed.

The following witnesses were examined on behalf of complainant:

A. A. Maginnis,
L. H. Gardner.

After which examination was adjourned to Saturday, January 28, 1888, at 12 m.

101 NEW ORLEANS, *January* 28, 1888.

Testimony for the complainant resumed this day as per adjournment, the respective solicitors being present.

The following witnesses were examined:

L. H. Gardner recalled.

Defendants offered in evidence all the correspondence, *pro* and *con*, that has passed between the water works Co. and the defendants, as far as could be found, numbered from 1 to 9 respectively.

Mr. Beckwith, for complainant, offered a copy of the mortgage securing the bonds issued by the company, and it was agreed that the printed copy now furnished and filed should be accepted in proof of the original.

It was further agreed that the time for taking testimony should be extended two months from Jan'y 29, 1888.

It was further agreed that either side may obtain transcripts of the depositions taken in the case of The N. O. Water Works Co. *vs.* The So. Brewing Co., No. 11351 of the docket of the U. S. circuit court, as taken and returned by the examiner in that case, and file the same in this case, to be used as evidence taken in this case.

The examination was then adjourned to Saturday, February 4, 1888, at 12 m.

The deposition of James D. Houston, taken in case No.
102 11351, New Orleans Water Works Co. *vs.* Southern Brewing Co., was, by agreement between the respective solicitors, *was* introduced here and offered in this cause No. 11565 as if originally taken herein.

NEW ORLEANS, *February* 4, 1888.

Present: W. S. Benedict, for defendant.
J. R. Beckwith " complainant.

The following witnesses were examined for the defendant:

John H. Maginnis,
Ambrose A. Maginnis.

The testimony taken before me and proofs offered as described in the foregoing return was returned by me into the clerk's office of the U. S. circuit court April 28, 1888.

(Signed) E. R. HUNT, *Examiner.*

N. O., May 12, 1888.

102½ No. 11565.

Offered by complainant 12 May, 1888.

Charter of the New Orleans Water Works Company.

103 Official.

Laws of the State of Louisiana.

Published by authority.

Extra session of 1877.

No. 33.] AN ACT

To enable the City of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Waterworks Company"; to authorize the said Company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of Waterworks bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the City of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That a corporation be, and the same is hereby created, to be styled "The New Orleans Waterworks Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

SEC. 2. *Be it further enacted, etc.*, That immediately after the organization of the said Waterworks Company, as hereinafter provided, it shall be required to issue to the City of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of Waterworks bonds which said city may have taken up heretofore and extinguished by payment, exchange, or otherwise; and that the residue of
104 said capital stock shall be reserved for the benefit of all holders of Waterworks bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this act; and the said Waterworks Company shall issue to the said City of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said Waterworks bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Waterworks bonds for stock, as aforesaid, the City of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Waterworks Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the City of New York, give notice

that it will exchange said stock at par for said Waterworks bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said City of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

SEC. 3. *Be it further enacted, etc.*, That the said Waterworks Company shall be organized by the Mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Waterworks bonds, which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of Finance, the said subscribers shall assemble together, on a day to be named
105 by the Mayor, and shall elect a Board of Directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first Board of Directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said Board shall elect one of their number as President.

SEC. 4. *Be it further enacted, etc.*, That as soon after the election of said Board of Directors as the City Council may determine, the Mayor of the city shall transfer, by notarial act, to said New Orleans Waterworks Company the Waterworks and all the property appurtenant thereto.

SEC. 5. *Be it further enacted, etc.*, That the said Waterworks Company shall own and possess the privileges acquired by the City of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this act the exclusive privilege of supplying the City of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase, or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city, or to distribute the same to the inhabitants of said city, and to construct, dig, or cause to be opened any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a

full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper, in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city of New Orleans: *Provided*, the same shall not be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and
106 establish by-laws for its government and that of its officers and employés, not repugnant to this Act and the Constitution of the State and of the United States, or the ordinances of the City of New Orleans.

SEC. 6. *Be it further enacted, etc.*, That on the first Monday of July, eighteen hundred and seventy-eight, and annually thereafter, an election for directors of said company, after ten days' notice of the same and place of holding the same, shall be held, at which election there shall be elected four Directors by all the stockholders other than the City of New Orleans; and the Mayor of the city, the Administrator of Waterworks and Public Buildings and the Administrator of Finance of said city, shall be *ex-officio* Directors of said company; the said city, through its Mayor and Administrators, shall have the right to vote at the election of Directors, and at all meetings of said stockholders, in the same manner as any other stockholders; that at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The directors elected shall serve for one year, and shall hold their offices until their successors are appointed; and no failure to elect directors at the time designated shall prevent the Board of Directors from fixing another day for holding the election; and in case of vacancy in the Board of directors, occasioned by death, resignation or absence from the State, or other cause, the Board of Directors may fill such vacancy for the remainder of the year.

SEC. 7. *Be it further enacted, etc.*, That the stock owned by said City of New Orleans in said Waterworks Company, shall not be liable to seizure for the debts of said city.

SEC. 8. *Be it further enacted, etc.*, That the stock of said Waterworks Company may be increased to two millions of dollars, for the purpose of enabling said company to improve, enlarge and extend its works: *Provided*, That the new or increased stock shall be paid for in cash or in work done for the company; and in case of nonpayment of instalments on stock subscribed for, the same may be forfeited to the use of said company.

SEC. 9. *Be it further enacted, etc.*, That the Board of Directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of
107 pure water; and to accomplish this purpose, the said Board of Directors are hereby authorized to issue the bonds of the company to an amount not exceeding two millions of dollars, in such sums, on such terms, and bearing such rate of interest as said Board may determine, and the payment of said bonds, in principal

and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corporation, and said mortgage may include the property and franchises of said company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the Parish of Orleans, shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re inscription: *Provided, however*, that no bond shall be issued, or mortgages given, without the consent of the Council of the city of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said Council of said city.

SEC. 10. *Be it further enacted, etc.*, That said company shall not declare or pay any dividends, except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt, nor shall any dividends be declared until the contemplated works are completed and in use.

SEC. 11. *Be it further enacted, etc.*, That the city of New Orleans shall be allowed to use water from the pipes and plugs of said company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets and charitable institutions, and that the said company shall place, free of any charge, whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of fires, for watering the streets and cleansing the gutters, and for any other public purpose; that on the squares which do not front on the river the hydrants shall be placed on opposite sides of the streets, at an equal distance
108 from each other and the corners. It shall be the duty of the said company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Waterworks Company, used in accordance with this act, shall be exempt from taxation—State, municipal, and parochial.

SEC. 12. *Be it further enacted, etc.*, That the said Waterworks Company shall have the right in the City of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water: *Provided*, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs, and that said streets shall be restored to the same condition they were in as soon as practicable, by the said company, under the supervision of the city surveyor. In case the said Waterworks Company shall require any lot of ground in the City of New Orleans, or any lot of ground or quantity of land situated in any parish of this State, for the purpose of constructing reservoirs or other works, or for the

purpose of laying pipes to conduct water to the City of New Orleans, and shall not be able to agree with the proprietor or proprietors of said lot of ground or land, the said company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may hereafter be enacted, and if the object of said company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not to the rights of absolute ownership.

SEC. 13. *Be it further enacted, etc.*, That the said Waterworks Company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi river, or elsewhere, as may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this act, and shall be year by year completed, so that, within five years from the date of this act, they shall be completed so as to give an adequate supply of water to the people of the
109 City of New Orleans, exclusive of the Fifth District. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein, and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said company shall, from time to time, as the wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum, extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said Waterworks Company to comply with this provision shall work a forfeiture of this charter.

SEC. 14. *Be it further enacted, etc.*, That the City of New Orleans, through its Council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be agreed upon between the City Council and the holders of such bonded or floating debt: *Provided*, said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the Council reserving the right to reject any and all bids.

SEC. 15. *Be it further enacted, etc.*, That the said Waterworks Company shall have the right to fix the rates of charges for water: *Provided*, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the City Council shall have the power to appoint a committee, of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profits shall exceed ten per cent., the City Council shall have the

right to require said company to reduce the price of water in such manner, and in such a proportion, that the profits shall never exceed the above named rates: *And, provided further*, that the rates charged shall never exceed those now paid by the city, and in case said company shall refuse compliance, the demand of said
110 city may be enforced by a writ of mandamus.

SEC. 16. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its suburbs, or shall change, alter, remove, injure or destroy any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the City of New Orleans, under the authority of this act; or if any person shall alter, change, or pollute the water or stream which the said company shall hereafter introduce, or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such offense, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offense, and imprisoned for a term not exceeding seven years, such fine to be paid and applied to the use of said company.

SEC. 17. *Be it further enacted, etc.*, That until other works are constructed by which the present works may be dispensed with, the same shall remain under the control of the City Council, and the superintendence thereof remain in the hands of the Administrator of Waterworks and Public Buildings; but the said company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be *ipso facto* extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privilege of
111 laying pipes to the river, exclusively for his own or their own use.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secretary of State.

No. 43.] AN ACT

Relative to the Charter of the New Orleans Waterworks Company and amending an Act number Thirty-three of Extra Session of eighteen hundred and seventy-seven (1877), approved March 31st, 1877.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That, at the election to be held, on the first Monday of July, eighteen hundred and seventy-eight (1878,) and annually thereafter, for Directors of the New Orleans Waterworks Company, the stockholders of the said New Orleans Waterworks Company shall elect four Directors; but the city of New Orleans shall not vote at said elections, she being already fully represented, for the amount of her stock, by the Mayor of the city, the Administrator of Waterworks and Public Buildings, and by the Administrator of Finance, who are *ex-officio* Directors of said company.

SEC. 2. *Be it further enacted, etc.*, That section ten (10) of said Act Number Thirty-three (No. 33,) of Extra Session of the year eighteen hundred and seventy-seven (1877,) be amended and re-enacted so as to read as follows: "That said company shall not declare or pay any dividends except in cash, and then only out of the net semi-annual or annual receipts after payment of expenses of operation, and gradual extension, and the interest on its bonded debt."

SEC. 3. *Be it further enacted, etc.*, That section seventeen (17)
112 of aforesaid Act be amended and re-enacted so as to read as follows: "That at the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privilege or right to supply water according to the provisions of the charter."

SEC. 4. *Be it further enacted, etc.*, That the time allowed to the said New Orleans Waterworks Company to commence and proceed to the erection of new works and pipes, (as contemplated by said Act Number Thirty-three,) (No. 33,) shall commence six months after the organization of said company, and not from the date of the passage of said act.

SEC. 5. *Be it further enacted, etc.*, That the full, complete and adequate supply of water referred to in section thirteen (13) of said Act No. 33, shall be so construed as to require a supply of water at the height of not less than fifteen (15) feet from the ground wherever the pipes of the Waterworks now exist.

SEC. 6. *Be it further enacted, etc.*, That the word "State" in section eleven (11) of said Act No. 33 of 1877, and in the last line thereof, be stricken out, so that the said company shall not be exempt from State taxation.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws con-

trary to the provisions of this Act, or in conflict therewith, are hereby repealed to the extent that they do conflict, and that this Act shall take effect from and after its passage.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved February 26, 1878.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secretary of State.

113 AN ACT

To incorporate the Commercial Bank of New Orleans.

Whereas, sundry inhabitants of the City of New Orleans have petitioned this General Assembly, setting forth that they are desirous of establishing a Company in the City of New Orleans, invested with banking privileges, and to be entitled the "Commercial Bank of New Orleans:" the chief object of which said Company, is to be the conveying of water from the river into the City of New Orleans and its faubourgs, and into the houses of its inhabitants. *And whereas*, the said object will greatly contribute to the security of the said City from fire, and to the health and convenience of the inhabitants, and the agricultural and commercial interests of this State may be greatly promoted by extending to said Company the the privileges required, *therefore*,

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SECT. 4. *Be it further enacted, &c.*, That all such persons as shall become subscribers to said company, their successors and assigns, shall be and are hereby created and made a corporation and body politic, by the name and style of the *Commercial Bank of New Orleans*, and by that name shall be and are hereby made capable in law, to have, hold, purchase, to receive in payment of debts, possess, enjoy, and retain, to them and their successors, property and estate of what nature, kind, or quality soever, or so far as is necessary to carry into complete effect the object of this charter, which is declared to be the furnishing of the city with good and wholesome water; and the same to alien, transfer and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court or courts of record, or other place whatsoever; to have forever the exclusive privilege, from and after the passing of this act, of supplying the city and inhabitants of New Orleans and its faubourgs, with water from the river Mississippi, by means of pipes or conduits, and for erecting, constructing, or working of any necessary engine; and they may contract for, purchase or lease, the right to enter and pass through, from time to time, as occasion may require, any lands or grounds through which they

may deem it necessary to convey the said water into said
114 city and its faubourgs; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the river from any place or places that they may deem fit, and to raise and construct such dykes, mounds, or reservoirs, as they may judge proper, for securing and conveying such supply of water, as aforesaid, to the said city and the faubourgs thereof; and to survey such lands as they may think proper, in order to ascertain the best mode of furnishing such supply, and to lay and place any number of conduits, pipes, and aqueducts, and to cleanse or repair the same, through or over any of the lands or streets of the city of New Orleans and its faubourgs; and also to have and use a common seal, and the same to break, alter and renew at pleasure; and also, through their president and directors, to ordain, establish, and put in execution, such bye-laws, ordinances, and regulations, as shall seem necessary and convenient for the government of said corporation, not being contrary to this act, nor to the constitution and laws of the United States, or of this State, or ordinances of the city council of New Orleans; and generally, to do and execute all such acts, matters and things, as to them shall or may appertain to do; subject, nevertheless, to the rules, regulations, restrictions, limitations and provisions hereinafter specified and declared. *Provided however*, that at any time after the expiration of thirty-five years from the passage of this act, it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans, the water works constructed by said company in virtue of this act—and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided.

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SECT. 11. *Be it further enacted, etc.*, That said company shall, within twelve months after the first election of directors, commence works, and commence to procure such materials, as may be necessary to enable them to furnish the inhabitants of the city of New Orleans and its faubourgs, with sufficient water from the river at all seasons of the year; and in order that the true intent and meaning of this act be strictly adhered to and complied with, and that the
115 waterworks, contemplated to be constructed by said company, be completed in the shortest time practicable, under all the circumstances, the sum of at least one hundred thousand dollars shall be expended, on the works aforesaid, annually, until the said company is in a situation to supply, and actually do supply, water to the greater part of the streets of the city proper, and the principal and most populous streets of the faubourgs—said expenditure to commence within one year after the passage of this act—so that the city of New Orleans and the faubourgs thereof, may be furnished with water in the streets, and such inhabitants may procure it by means of conduits or pipes, within their houses and lots, at a price to be regulated by the company: and should the said company fail or neglect either to commence or continue said works as aforesaid, then, and in such case, the charter now granted shall be wholly null

and void; *provided, however*, that the net profits on the same shall not exceed an interest of fifteen per centum per annum, from the time of disbursements on said works; and at such times as dividends shall be declared by the bank, say semi-annually, the interest on the sum expended in constructing said waterworks shall be added thereto, and shall form a part of the capital invested, until the net revenue of said works amount to fifteen per centum as aforesaid; *and provided also*, that the City Council of New Orleans shall have the power annually to appoint a committee, who shall have access to such of the books of said bank as relate to the said Waterworks Company, and may make such extracts from the same as they may think necessary; *and provided further*, that at the end of five years after the first appropriation, the said net profits shall not exceed ten per cent.—and in case said profits should exceed fifteen per centum during the first five years, and ten per centum after wards, as provided for in this section, the City Council shall have the power to reduce the price of water, in such a manner and in such a proportion, that the profits should never exceed the above mentioned rates.

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SECT. 21. *Be it further enacted, etc.*, That within the first thirty days that the books are opened for subscription, the corporation of the city of New Orleans may subscribe for five thousand shares of
116 the capital stock of said company, not subject to deduction; and for which the said company may receive the bonds of the mayor, aldermen and inhabitants of New Orleans, redeemable in forty years, bearing an interest not exceeding five per centum per annum, payable half yearly.

SECT. 22. *Be it further enacted, etc.*, That if, agreeable to the twenty-first section of this act, the corporation of the city of New Orleans shall subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, then, and in that case, the City Council of New Orleans shall annually elect, by ballot, from the mayor, recorder and aldermen of said Council two persons, who shall be members of the Board of Directors; and the stockholders shall only elect eleven instead of thirteen directors, as provided for in the third and sixth sections of this act, in which election the said City Council shall not vote as stockholders; *provided*, that nothing herein contained shall be so construed, as in any manner to impede, diminish or impair, the rights and powers granted to the City Council of New Orleans, and to the committee to be appointed by them annually, by virtue of the eleventh section of this act.

SECT. 23. *Be it further enacted, etc.*, That the provisions of the thirteenth section of this act relative to half yearly dividends, shall not be so construed as to apply to the stock, subscribed for and owned by the corporation of the city of New Orleans; the dividends arising from the shares so owned, shall be applied, first, to the payment of the interest on the bonds given to the Commercial Bank of New Orleans for the stock subscribed by the said corporation, and the surplus shall be passed to the credit of the said corporation, half yearly, at such times as dividends are payable to other stockholders,

to be set apart as a sinking fund, applicable alone to the payment of the bonds of said corporation, when they shall become due, and the said corporation shall be allowed an interest of five per centum per annum on the same, by the Commercial Bank of New Orleans.

SECT. 24. *Be it further enacted, etc.*, That if the corporation of the city of New Orleans shall fail to subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, within the first thirty days the books are opened for subscriptions,
117 the twenty first, twenty-second and twenty-third sections of this act shall be considered null and void, and of no effect.

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SECT. 33. *Be it further enacted, &c.*, That in the city of New Orleans, its suburbs, and adjoining lands laid out in town-lots, the company shall have the power of using the streets and public places, for the purpose of placing pipes to run the water: *Provided*, they do not obstruct the said streets longer than will be absolutely necessary for the said purpose, or for making any repair; *and provided* they restore the said streets to the same condition they were before, in as short a time as possible; that within the said limits, it shall not have power to place any pipe, or do any work upon any lot of ground, without the consent of the owner; and that out of the said city, its suburbs, and the lands laid out in town-lots, if the said company shall not be able to agree with the proprietor or proprietors of lots of ground through which it may be necessary to run the water, through pipes or otherwise, as the directors may deem expedient, for the purpose of introducing water into the said city and its faubourgs; or if such owner or owners shall be absent out of the State, or unknown, or shall, from incapacity, legal or otherwise, be precluded from making any contract or agreement in relation thereto, it shall and may be lawful, on the application of the president and directors of the Commercial Bank of New Orleans, for the judge of that judicial district of Louisiana wherein the city of New Orleans is, or may be hereafter, situated, to issue his warrants to the sheriff of the parish of Orleans, commanding.

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SECT. 36. *Be it further enacted, &c.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its faubourgs, or shall change, alter, remove, injure or destroy, any work or part of a work made by the said company, or caused to be made, for the purpose of introducing water into the city of New Orleans and its faubourgs, under the authority of this act; or if any person shall alter, obstruct, change or pol-ute, by any tan-yard, hog-stye, slaughter-house, dye-pot, or otherwise, the water or streams
118 which the said company shall hereafter introduce, or shall be preparing to introduce into the city of New Orleans and its faubourgs, under the authority given and regulations prescribed by this act, such person or persons shall be indicted in the proper court for the trial of offences within the parish of New Orleans committed, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offence, and imprisoned

for any time not exceeding seven years; such fine to be paid and applied to the use of said company.

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SECT. 38. *Be it further enacted, &c.*, That the corporation of New Orleans shall be supplied by the said company, free of charge, with all water necessary for the extinguishment of fires and other public purposes; nor shall the city council be subjected to any charge for water furnished to supply the gutters of the said city and faubourgs; and that the said company, as they progress in laying acqueducts, shall place, free of any charge whatever, two hydrants of a proper construction, in front of each square, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn, for extinguishing fires, for wetting, washing and watering the streets and gutters, and any other public purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners; that the said hydrants shall be of a proper size and made so as at all times to furnish water for the fire engines, and purposes herein mentioned: it shall further be the duty of said company, to supply water for all the purposes herein mentioned, at all times, during the continuance of this charter, unless prevented by some unavoidable accident; and in case such shall occur, the repairs shall be made and the water again furnished at the expiration of the necessary delay; and the said company shall supply a sufficient quantity of clear, pure and wholesome water for the use of the inhabitants, within the limits aforesaid, at the elevation of fifteen feet, when the same may be required. *Provided however*, that said hydrants shall be under the control of the Commercial Bank.

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SECT. 41. *Be it further enacted, &c.*, That the second section 119 of this act shall not be so construed as to apply to the payment of ten dollars per share *at the time of subscribing*, on the stock subscribed for by the City Council of New Orleans. But said corporation shall, within thirty days from the organization of the first board of directors of the Commercial Bank of New Orleans, execute in the form required by the directors, the bonds of the mayor, aldermen and inhabitants of New Orleans, to the order of the president and directors of said company, for the full amount of stock subscribed by the corporation aforesaid, say five hundred thousand dollars, bearing an interest of five per centum per annum, payable in forty years, the interest on said bonds to be paid semi-annually; and should the bonds taken by said company, from the corporation aforesaid, be sold at a premium, such premium or excess, over and above their par value, shall form a part of the sinking fund, as provided for in the twenty-third section of this act.

SECT. 42. *Be it further enacted etc.*, That when, after the expiration of thirty-five years, the said corporation of New Orleans shall be inclined to buy the said waterworks from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the Commercial Bank

of New Orleans, and five by the City Council of New Orleans; said arbitrators not to be stockholders in said company, nor members of the City Council of New Orleans. Said arbitrators shall take into consideration the *value* of the waterworks and grounds appertaining thereto, for supplying the city and faubourgs of New Orleans with water by the said company; and if they agree, and so report, in *writing*, their award shall be binding on the respective parties. But in case of disagreement, the judge of the judicial district court in which the said waterworks are situated, shall appoint as umpires, five disinterested individuals as above, whose decision and award, *in writing*, reported to the judicial district court aforesaid, shall be binding and conclusive. And the amount so agreed upon, shall be payable in the bonds of the mayor, aldermen and inhabitants of New Orleans, bearing an interest of five per centum per annum, interest payable thereon semi-annually, and redeemable in not less
120 than ten, nor more than thirty years from the day on which said award shall be signed, and the said waterworks delivered over to the said corporation of New Orleans.

SECT. 43. *Be it further enacted, etc.*, That in case the mayor, aldermen and inhabitants of New Orleans shall deem it unadvisable or inexpedient to purchase the said waterworks from the Commercial Bank of New Orleans, as provided for in sections four and forty-two, and so notify the Commercial Bank of New Orleans thereof, at any time within eighteen months thereafter, the bonds given by the mayor, aldermen and inhabitants of New Orleans, for the amount of stock owned by the corporation of New Orleans, shall be renewed by the Commercial Bank of New Orleans for twenty-five years, on the same terms and conditions as provided for in sections twenty-one and forty-one of this act; *provided, however*, the amount formed by the sinking fund herein provided, shall be applied to the payment of said bonds, as far as it will go, and the bonds only renewed for such balance as may not be made up by the sinking fund aforesaid.

SECT. 44. *Be it further enacted, etc.*, That the corporation of New Orleans shall and may continue to make use of the waterworks now owned by the said corporation, for supplying the city with water, until the Commercial Bank of New Orleans shall be so far advanced with the works contemplated by this act, as will enable them to furnish water in such parts of the city as are now supplied by the works at present in operatson; or until, by the progress of the waterworks so to be constructed, it may become necessary to remove the pipes at present in use, should such removal be found necessary.

SECT. 45. *Be it further enacted, etc.*, That the said company, in constructing the waterworks aforesaid, shall purchase from the mayor, aldermen and inhabitants of New Orleans, the pipes already laid down by said corporation, at such price as may be agreed upon by seven arbitrators, of whom the superintendent of the works proposed to be constructed, shall be one, and three to be chosen by the president and directors of the Commercial Bank of New Orleans, and three by the City Council of New Orleans, whose award, as to the *value* of said pipes, for the use of said company, shall be final.

121 SECT. 46. *Be it further enacted, &c.*, That it shall be the duty

of the said Bank, to sell to the best advantage, the bonds received of the mayor, aldermen and inhabitants of the city of New Orleans, for their subscription, and to contract for the payment of the interest thereof, at such place or places as the president and directors may deem expedient. *Provided* that any additional charge, loss or exchange, or other expenses, consequent upon the sale of the bonds, or payments of such interest in any other place than New Orleans, shall be wholly defrayed by the Bank.

SECT. 47. *Be it further enacted, &c.*, That during the first term of thirty days, in which the subscription books shall remain open, as provided for in section first, no person shall be allowed to subscribe, who is not a citizen of the United States and a resident of this State, of which fact the commissioners shall be the sole judges; and that all subscriptions shall be made in person, or under a notarial power, executed by not more than three persons. *Provided, however*, this section shall not be so construed as to prevent subscriptions, after the first term of thirty days, either in person or by proxy, should the books be re-opened. And that no individual, commercial firm or corporation, shall be allowed a greater number of votes than one hundred, for the election of directors of said Bank, either by proxy or otherwise, in his, her or their name.

SECT. 48. *And be it further enacted, &c.*, That the president and directors of the Commercial Bank of New Orleans, may, at such time as they may deem it expedient, establish agencies at such places as they may think proper, for the purchase of bills of exchange and sale of Bank checks; and may appoint such officers as they may think proper for the administration of the same.

(Signed) ALCEE LABRANCHE,
Speaker of the House of Representatives.

(Signed) C. DERBIGNY,
President of the Senate.

Approved April 1, 1833.

(Signed) A. B. ROMAN,
Governor of the State of Louisiana.

122 Circuit Court of the United States, Eastern District of Louisiana.

NEW ORLEANS WATER WORKS COMPANY *versus* MAGINNIS OIL SOAP WORKS. } No. 11565.

Copy of act of transfer from Commercial Bank to New Orleans and copy of act of mortgage of New Orleans Water Works Company, offered in evidence by complainant.

Offered by complainant.

Filed May 12, 1888.
E. R. HUNT, *Clerk.*

STATE OF LOUISIANA,
PARISH OF ORLEANS, CITY OF NEW ORLEANS. }

Be it known, that on this nineteenth day of January, in the year of

our Lord one thousand eight hundred and sixty-nine, and the ninety-third of the Independence of the United States of America, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable John R. Conway, mayor of the
123 city of New Orleans, and herein acting in such capacity of mayor, under and by virtue of resolution No. 1232, new series, passed by the honorable the common council of New Orleans, approved January the sixteenth, 1869, a certified copy of which is hereto annexed for reference, and the same is in the words and figures following, to wit:

Resolved, That, in order to complete the purchase and delivery of the water works purchased from the Commercial Bank of New Orleans, the mayor be, and is hereby, authorized to sign a notarial act acknowledging delivery of the same and the movable and immovable property included in said purchase, and on the signing of such act by the president of the Commercial Bank, duly authorized, the mayor be, and is hereby, authorized to give his obligation to deliver to said president of the Commercial Bank, within sixty days from the signing of such act, bonds of the city of New Orleans to the amount of thirteen hundred and ninety-three thousand and four hundred dollars, having thirty years to run, and bearing interest at the rate of five per centum per annum from the first day of January, 1869, payable semi-annually on the first day of January and the first day of July in each and every year, provided the same meet with the approval of the city attorney.

And also came and appeared Felix Labatut, president of the Commercial Bank of New Orleans, a duly incorporated institution of this State, and herein acting in such capacity as president, under and by virtue of a resolution passed at a meeting of the board of directors of said bank, held on the thirteenth day of January, instant, a duly certified copy of which said resolution is hereto annexed for reference.

Which said parties declared that whereas by an act of the Legislature of this State, incorporating the said Commercial Bank and granting it the privilege of conveying water from the Mississippi river into the city of New Orleans and its faubourgs and into the houses of its inhabitants, entitled "An act to incor-
porate the Commercial Bank of New Orleans," approved April
124 1, 1883, it was provided by the fourth and forty-second sections thereof, that at any time after the expiration of thirty-five years from the passage of said act it shall be lawful for the corporation of the city of New Orleans to purchase from said Commercial Bank of New Orleans the water works to be constructed by said company, by virtue of said act at a price to be fixed by arbitrators, of whom five shall be chosen by the president and directors of said Commercial Bank of New Orleans and five by the city council of New Orleans, and none of whom are to be stockholders in said company nor members of the city council of New Orleans, and that the award of said arbitrators, in writing, in case of their agreement,

should be binding on the respective parties, and that the amount so decided upon should be payable in bonds of the mayor, aldermen and inhabitants of New Orleans, bearing an interest of five per centum per annum, payable semi-annually, and redeemable in not less than ten nor more than thirty years from the day on which said award should be signed and the said water works delivered over to the said corporation of New Orleans.

And whereas, the city of New Orleans has deemed it expedient to purchase the said water works, as provided for in sections four and forty-two of the aforesaid act, and has signified its intention so to do, under and by virtue of resolution No. 889, new series, passed by the honorable the common council of New Orleans, and approved March 27th, 1868, a certified copy of which said resolution is hereto annexed, and it is in the words and figures following, viz:

No. 889—New Series.

Whereas, by an act of the Legislature of the State of Louisiana to incorporate the Commercial Bank of New Orleans, approved April 1, 1833, establishing a company in the city of New Orleans invested with banking privileges, and to be entitled the
125 "Commercial Bank of New Orleans," the chief object of which said company is to be the conveying of water from the river into the city of New Orleans and its faubourgs and into the houses of its inhabitants;

Whereas the first section provides the original stock shall be three millions of dollars;

Whereas the fourth section provides that at any time after the expiration of thirty-five years from the passage of this act it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans the water works constructed by said company in virtue of this act, and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided;

Whereas the thirty-eighth section provides that the corporation of New Orleans shall be supplied by said company, free of charge, with all water necessary for the extinguishment of fires and other public purposes, as they progress in laying aqueducts they shall place, free of any charge whatever, two hydrants of proper construction in front of each square, and the said company shall supply a sufficient quantity of clear, pure, and wholesome water for the use of its inhabitants at the elevation of fifteen feet when the same may be required;

Whereas the forty-second section provides that if after the expiration of thirty-five years the said corporation of New Orleans shall be inclined to buy the said water works from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the Commercial Bank of New Orleans and five by the city council of New Orleans;

said arbitrators shall take into consideration the value of the water works and grounds appertaining thereto, and the amount so agreed upon shall be payable in bonds bearing five per cent. interest, redeemable in not less than ten nor more than thirty years: Therefore, be it—

126 Resolved, That the city of New Orleans will purchase the Commercial Water Works upon the terms and conditions as provided for in act of the Legislature of the State of Louisiana to incorporate the Commercial Bank of New Orleans, approved April 1, 1883.

(Signed) WM. T. HEPP,
President Board of Assistant Aldermen.

(Signed) JAMES GRAHAM,
President Board of Aldermen.

Approved March 27, 1868.

(Signed) E. HEATH, *Mayor.*

A true copy. D. D. WHITAKER,
Secretary.

And whereas, agreeably to the provision of said section forty-two of the aforesaid act of the Legislature incorporating said Commercial Bank of New Orleans, the common council of New Orleans, at a joint session thereof held on the 7th April, 1868, elected Messrs. Josiah B. Richardson, Edward Filleul, John M. G. Parker, William H. Bell, and Daniel Blair, all of this city, as the five arbitrators on part of the city, and at a subsequent joint session of said council, held on the 5th day of May, 1868, John Lockwood, of this city, was elected as one of the five arbitrators on the part of the city in the place of Daniel Blair, previously elected, but who had resigned the position of such arbitrator, as will appear by reference to the annexed extract from the minutes of said common council; and the president and directors of said Commercial Bank, agreeably to said section No. 42, at a meeting thereof held on the 2d day of May, 1868, elected Messrs. William C. C. Claiborne, John Commuuy, Frank H. Hatch, James Freret, and Joseph Hernandez, all of this city, as the five arbitrators on the part of the said Commercial Bank of New Orleans, as will appear by reference to the annexed extract from the minutes of the proceedings of the said meeting.

127 And whereas the said ten arbitrators, after having taken into consideration the value of the said water works and grounds appertaining thereto for supplying the city and *and* faubourgs of New Orleans with water by the said company, agreed and fixed the price at which said water works and all its appurtenances (with the exception of the buildings and lot of ground situated on Dryades street) should be sold to the city of New Orleans for the sum of two millions of dollars, payable in bonds of the city of New Orleans, as provided for by the forty second section of the charter of said bank, which said report is in the words and figures following, to wit:

To the honorable mayor and common council of New Orleans:

We, the undersigned, having been appointed by the city of New

Orleans and the Commercial Water Works Company arbitrators for the purpose of fixing the price for which said water works and its appurtenances are to be sold to said city of New Oreans, five of us having been appointed by the common council of said city, namely: J. M. G. Parker, Josiah B. Richardson, John Lockwood, Edward Filleul, and William H. Bell, and five by the said Commercial Water Works Company, namely, W. C. C. Claiborne, John Commuuy, Frank H. Hatch, James Freret, and Joseph Hernandez, after having met several times and examined thoroughly the property of said company and taken into consideration the value of the water works and grounds appertaining thereto for supplying the city and faubourgs of New Orleans with water by said company, hereby fix the price of said water works, in pursuance to the forty-second section of the charter of said corporation, at the sum of two millions of dollars, for which price the water works and all its appurtenances (with the exception of the buildings and lot of ground situated on Dryades street) are to be sold by the said corporation to the city of New Orleans, the said sum payable in bonds of the city of
128 New Orleans, as provided by the forty-second section of the charter of said bank.

New Orleans, July 22, 1868.

JOHN LOCKWOOD,
JOSIAH B. RICHARDSON,
J. HERNANDEZ,
W. H. BELL,
JN. COMMUNY,
W. C. C. CLAIBORNE,
F. H. HATCH,
E. FILLEUL,
JOHN M. G. PARKER,
JAS. FRERET.

All relative to which will more fully appear by reference to the annexed certified extract from the proceedings of the board of assistant aldermen of the common council of the city of New Orleans, at a meeting thereof held on the 28th day of July, 1868.

And whereas the city of New Orleans is a stockholder in the capital stock of the said Commercial Bank of New Orleans for five thousand shares of one hundred dollars each, by reason of which the said city is entitled to a credit of five hundred thousand dollars of the aforesaid sum of two millions of dollars agreed upon by the said arbitrators as the price which the said city of New Orleans should pay for said water works and appurtenances; said city is also entitled to a further credit on said price of the sum of one hundred and six thousand six hundred dollars, the same arising from its interest as such stockholder in and to the cash pertaining to the sinking fund created under the provisions of the 23d section of the charter of said Commercial Bank, and which said sums of five hundred thousand dollars and one hundred and six thousand six hundred dollars, making the total sum of six hundred and six thousand six hundred dollars, being deducted from the said price and sum of

two millions of dollars, makes the amount which said city of
129 New Orleans is to pay for the aforesaid water works, with the appurtenances and grounds appertaining thereto, the sum of one million three hundred and ninety-three thousand and four hundred dollars, payable in bonds, which the said city is authorized to execute and deliver, under the provisions of an act of the General Assembly of this State, entitled "An act to amend an act entitled 'An act to incorporate the Commercial Bank of New Orleans, approved April 1, 1883,' approved July 22, 1868."

Now, therefore, in consideration of the premises, and in order to give unto the city of New Orleans an authentic title to the said water works and all appurtenances thereto pertaining, the said Felix Labatut moreover declared, in his said capacity, that by virtue of the authority in him vested by the aforesaid resolution of the board of directors of said Commercial Bank of New Orleans, and for the consideration and on the terms and conditions hereinafter expressed, he does, by these presents, cede, grant, bargain, sell, transfer, assign, set over, and deliver unto the city of New Orleans, herein represented by the said Honorable John R. Conway, mayor thereof, who accepts the same for the said city and its assigns, and acknowledges delivery and possession thereof:

All and singular the property, real and personal, of whatever nature or kind soever, belonging to the water works constructed and established by the said Commercial Bank of New Orleans, and the dykes, mounds, reservoirs, machinery, engines, boilers, pumps, conduits, aqueducts, pipes, tools and other appurtenances appertaining thereto.

And the real estate aforesaid is described as follows, to wit:

1st. A certain square of ground, together with the reservoirs, buildings, and all other improvements thereon, and the rights, servitude, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the Faubourg Annunciation, first district of this city, designated by the number eighteen on a
130 plan of said faubourg drawn by B. Lafon, surveyor, dated the fifteenth day of May, one thousand eight hundred and seven, which said square is bounded by Religious, St. Thomas, (formerly St. John the Baptist), Richard, and Market streets, and it has a front on each of the said streets of three hundred feet. Said square of ground was acquired by the said Commercial Bank of New Orleans by purchase and as the last and highest bidder thereon at a public sale thereof made by George Washington Morgan, sheriff of the parish of Orleans aforesaid, on the fifth day of May, one thousand eight hundred and thirty-four, under and by virtue of an order of seizure and sale to him directed by the honorable the parish court of the parish of Orleans, at the suit of Didier Dreux vs. John Green, number 7277 of the docket of the said court, as per the deed of said sale in the premises hereunto annexed made by the said sheriff and bearing date the nineteenth day of May, A. D. eighteen hundred and thirty-four. And by an act passed before Hilary B. Cenas, late a notary in this city, on the nineteenth day of May, eighteen hundred and thirty-four, John D. Bein, James Peuch, John

Armstrong, William E. Leverich, Alexander McKeever, Isaac L. McKay, and Sarah Matilda Beck, parties to said act and joint proprietors of said square of ground at the time of the public sale thereof made as aforesaid, did, severally and each for the proportion of the said square of ground claimed by him or her therein, ratify and confirm the said sheriff's sale, and hold the same binding on them in the same manner and to the same extent as if it had been their own proper act and will, all in relation to which will more fully appear in the said act, to which reference is hereby made.

2d. A certain piece or portion of ground, together with all the buildings and improvements thereon, and the machinery, boilers, engines, cisterns, rights, privileges, servitudes, ways, and appurtenances thereunto belonging or in anywise appertaining, situated in the suburb Lacourse, first district of this city, in the square
131 bounded by New Levee, Tchoupitoulas, Richard and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street, and three hundred and eighty-three feet seven inches and three lines on a straight line running from the termination of the line on New Levee street aforesaid to the termination of the line on Tchoupitoulas street aforesaid parallel to Orange street, and dividing the said piece or portion of ground from the properties now or formerly belonging to A. Caldwell and to R. Toledano, which form the remainder of said square.

Said piece or portion of ground was, prior to its acquisition by the said Commercial Bank of New Orleans, divided into twenty lots, and they were acquired by said Commercial Bank as follows, to wit: Eight thereof, designated by the numbers 1, 2, 3, 4, 5, 18, 19 and 20 on a plan thereof drawn by Charles F. Zimpel, surveyor, and deposited in the office of G. R. Stringer, late a notary in this city, as plan No. 4, and measuring together one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street and one hundred and eighty-four feet four inches and seven lines front on Richard street, forming the corner of Tchoupitoulas and Richard streets in said square, by purchase, and as the last and highest bidder thereon, at a public sale thereof made by George W. Morgan, sheriff of this parish, on the sixteenth day of June, A. D. eighteen hund[red] and thirty-four, by virtue of an order of execution to him directed by the district court of the first judicial district of the state of Louisiana, in a suit of partition entitled "John Green and J. W. Justamond vs. Widow Maguire, in her own name and as tutrix of her minor child," No. 11213 of the docket of said court, as per the said sheriff's deed of sale, dated the 10th day of July, 1884; also, seven thereof, designated by the numbers 1, 2, 3, 4, 5, 6 and seven on a plan drawn by said surveyor Zimpel, dated
132 27th of April, 1832, and deposited in the office of said late notary, H. B. Cenas, which said seven lots measure together seventy-one feet nine inches and six lines front on New Levee street and one hundred and ninety-nine feet two inches and four lines

front on Richard street, forming the corner of New Levee and Richard streets in said square, by purchase from Levi Pierce, as per the act of sale passed before the said notary, H. B. Cenas, on the 13th day of April, 1835; also, two thereof, designated by the numbers 9 and 10 on a plan drawn by said surveyor Zimpel, deposited in the office of said notary, G. R. Stringer, and measuring together forty-eight feet front on New Levee street, by purchase from Pascal M. Tourne and Nicholas Beckwith, as per the act of sale thereof, passed before the said late notary, H. B. Cenas, on the 3d day of April, 1835; lastly, the three remaining of said lots, designated by the numbers 6, 7 and 8 on a plan drawn by surveyor Zimpel in the year 1832 and deposited in the office of said notary, G. R. Stringer, measuring together seventy-two feet front on New Levee street, by purchase from Alexander Grailhe, as per the act of sale thereof, passed before the said late notary, H. B. Cenas, on the 14th day of February, 1839. And by an act of compromise entered into between the said Alexander Grailhe and the said Commercial Bank of New Orleans, and passed before the said notary, H. B. Cenas, on the 13th day of December, 1844, certain matters of dispute between the said parties growing out of said sale were settled to their mutual satisfaction.

And the personal property herein transferred having been delivered to the commissioners of the water works of said city of New Orleans, and they being satisfied with the quantity and nature of the articles so delivered, the said mayor Conway hereby dispenses with a particular and exact inventory thereof for annexation hereto, as is otherwise required by law.

By reference to the annexed certificates of the register of conveyances and the recorder of mortgages in and for this city
133 and parish, dated this day, it will be seen, first, that the real estate and appurtenances herein described have not been alienated by said Commercial Bank of New Orleans prior to the date hereof, and stand registered in its name; and, second, that the said property is free from incumbrances in the name of said bank, with the exception of the privilege of drainage, and also the general mortgage in favor of the city of New Orleans for the sum of two thousand three hundred and ninety-two dollars, with interest, costs, etc., resulting from a judgment rendered by the honorable the second district court of New Orleans on the thirteenth day of March, eighteen hundred and fifty-eight, against the Commercial Water Works, for taxes for eighteen hundred and fifty-six: to have and to hold the said property and appurtenances unto the city of New Orleans and its assigns forever.

And the said Labatut, in his said capacity, moreover, transfers unto the city of New Orleans all the rights and actions of warranty to which the said Commercial Bank of New Orleans is or may be entitled against all the former proprietors of the property herein conveyed, subrogating the said city of New Orleans to the said rights and actions, to be by it enjoyed and exercised in the same manner as they might have been by said Commercial Bank of New Orleans.

This sale and transfer is made and accepted in conformity with the above award of said arbitrators and agreeably to the aforesaid

deduction agreed upon by and between the board of directors of said Commercial Bank of New Orleans and the city of New Orleans, for and in consideration of the price and sum of one million three hundred and ninety-three thousand four hundred dollars and interest, as hereinafter expressed; in settlement of which the said mayor Conway hereby promises for and binds and obligates the city of New Orleans to deliver, or cause to be delivered, within sixty days from and after the date of these presents, unto the president
134 of said Commercial Bank of the city of New Orleans bonds of the city of New Orleans, signed by the mayor, comptroller and treasurer thereof, amounting in the aggregate to the said sum of one million three hundred and ninety-three thousand four hundred dollars, and of such amounts as may be agreed upon, payable on the first day of January, A. D. eighteen hundred and ninety-nine, at the office of the city treasurer, and bearing interest at the rate of five per cent. per annum from and after the first day of January, A. D. eighteen hundred and sixty-nine, payable semi-annually on the first day of January and July of each and every year during the period aforesaid at the office of said city treasurer, and for which interest the requisite number of coupons will be attached to each bond.

The aforedescribed real estate is exempted by law from the payment of all State and city taxes, and receipts have been produced and exhibited to me, notary, showing that eight several installments for drainage have been paid on said property.

And, finally, it is understood and agreed to that the buildings and lot of ground situated on Dryades street and specified in the aforesaid report of the said arbitrators as being excluded from this sale and transfer is more fully and particularly defined and described as a certain lot of ground, together with all the buildings and improvements thereon and all rights and privileges thereto belonging, situate in the first district of this city, in the square bounded by Dryades, Canal, Rampart and Common streets, and measuring in English measure fifty-two feet front on Dryades street and forty-five feet in width in the rear by one hundred and five feet six inches in depth, being the same property which the said Commercial Bank of New Orleans acquired by purchase from Mrs. Marian Jackson by an act passed before said late notary Hilary B. Cenas on the second day of March, one thousand eight hundred and fifty-seven.

Thus done and passed in my office, at New Orleans aforesaid, in the presence Messrs. James Graham and George Cenas,
135 witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, on the day and year set forth in the caption hereof, after due reading of the foregoing.

(Original signed:) FELIX LABATUT, *President*,
JOHN R. CONWAY, *Mayor*.

Approved:
HENRY I. LOEVY,
City Att'y.
ANDREW HERO, JR.,
Not. Pub.

A true copy of the original act (duly stamped) on file and of record in my office.

New Orleans, 20th March, 1869.

[5 cents int. rev. stamp affixed.]

[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

1ST APRIL, 1879.

Mortgage. New Orleans Water Works Co., to Adolphe Schreiber.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA, CITY OF NEW ORLEANS.

Be it known that on this first day of April, eighteen hundred and seventy-nine, before me, James Fahey, a notary public in and for this city and the parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Messieurs Edward Toby and Alexander Bonneval, both of this city and respectively the president and secretary of and herein acting for the New Orleans Water Works Company, who declared that whereas the said New Orleans Water Works Company has been duly incorporated under and by virtue of act number thirty-three of the Legislature of this State, passed during the extra session of 1877,
136 approved 31st March, 1877, entitled An act to enable the city of New Orleans to promote the public health, and to afford greater security against fire by the establishment of a corporation to be called the New Orleans Water Works Company; to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water works bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the city of New Orleans, and of act number forty-three, amendatory thereto, passed during the regular session of 1878 and approved on the 26th of February, 1878, entitled An act relative to the charter of the New Orleans Water Works Company, and amending act number thirty-three of extra session of 1877, approved March 31st, 1877.

And whereas section number nine of said act number thirty-three provides that the board of directors of said New Orleans Water Works Company shall have power to borrow money for the purpose of improving and enlarging its works and increasing the supply of pure water, and in order to accomplish the said purpose the board of directors of said company was by said act authorized to issue the bonds of said company to an amount not exceeding two million dollars, in such sums, on such terms, and bearing such rate of interest as said board may determine and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchises to be a corporation, and said mortgage may include the property and

franchises of said company, acquired, or to be acquired, and the registration of said mortgage in the office of the recorder of mortgages for the parish of Orleans shall operate on the property and franchises of said company wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of said debt secured by it without reinscription: Provided, however,
137 That no bond shall be issued or mortgage given without the consent of the council of the city of New Orleans; and said bonds shall not be sold or disposed of except on such terms as shall be approved by said council of said city; and

Whereas, in pursuance of said act, the council of the city of New Orleans, by Ordinance No. 4628, adopted at its meeting of the 7th August, 1878, consented to the issuance of said bonds of said company, bearing mortgage, provided that said bonds of said company shall not bear more than six per cent. per annum interest, and shall not be sold or disposed of at less than their par value, a true copy of which ordinance is hereto annexed as part hereof, and is in the words and figures following, to-wit:

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August 8th*, 1878.

No. 4628—Administration Series.

Whereas section 9 of act No. 33 of the extra session of 1877 provides that the board of directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works and increasing the supply of pure water, and to accomplish this purpose said board of directors are hereby authorized to issue the bonds of the company to an amount not exceeding two million dollars, in such sums, on such terms, and bearing such rate of interest as said board may determine; and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corporation; and said mortgage may include the property and franchises of said company, acquired or to be acquired, *in* the registration of said mortgage in the office of the recorder of mortgages for the parish of Orleans, shall operate on the property and franchises of said company wheresoever situated, and shall be and continue a
138 valid and subsisting mortgage until the payment of the debt secured by it without reinscription. Provided, however, that no bond shall be issued or mortgage given without the consent of the council of the city of New Orleans; and said bonds shall not be sold or disposed of, except on such terms as shall be approved by said city council of said city; and whereas the board of directors of the New Orleans Water Works Company has passed a resolution at the meeting held on the 22d July, 1878, at the office of the company, No. 47 Camp street, to issue five hundred thousand dollars of bonds of said company, bearing six per cent. per annum, payable not less than twenty-five years after date, and the payment of which capital and interest is secured by a mortgage covering all the property and

franchises of said company, acquired or to be acquired, including its franchise to be a corporation, for the purpose of improving and enlarging its works and increasing the supply of pure water.

Be it resolved, That the council of the city of New Orleans hereby approves and gives its consent to the issuance of said bonds bearing mortgage, as above stipulated; Provided, that the said bonds shall not bear more than six per cent. interest per annum, and shall not be sold or disposed of at less than their par value.

Adopted by the council of the city of New Orleans, August 7th, 1878.

Yeas: Cavanac, Denis, Diamond, McCaffrey.

ED. PILLSBURY, *Mayor.*

THOS. G. RAPIER, *Secretary.*

I hereby certify that the above ordinance is a true copy of ordinance No. 4628, A. S., adopted by the city council of New Orleans, on the 7th day of August, 1878, and that the same has been duly promulgated in the official journal.

R. C. MORGAN,
Ass't Sec'y Council.

139 And whereas the said Edward Toby and said Alexander Bonneval, in their said capacity of president and secretary of said New Orleans Water Works Company, were authorized to borrow a sum of five hundred thousand dollars ($500,000) for the purposes in said acts contained and set forth, and on the terms therein stipulated, under and by virtue of a resolution of the board of directors of said company adopted at their meeting held on the 29th January, 1879, which resolution is amendatory of another resolution adopted by said board of directors on the 22d July, 1878, true copies whereof are hereto annexed as part hereof, and which said resolutions are in the words and figures following, to wit:

Special Meeting of the Board of Directors of the New Orleans Water Works Company.

NEW ORLEANS, *January 29th*, 1879.

The board met this day pursuant to adjournment of the special meeting held January 27, 1879.

Present: Messrs. E. Toby, pres't; Hon. I. W. Patton, mayor; Hon. A. H. Isaacson, ad'r of finance; Hon. E. R. Chevalley, ad'r of water works and public buildings; Paul Fourchy, P. Sala, and W. Washburn.

On motion of Mr. Paul Fourchy, duly seconded, the report, plans, specifications, and estimates of Mr. Moses Lane, civil engineer, were unanimously adopted.

The president submitted to the board the form of the act of mortgage, which, by resolution passed at the meeting of the board held July 22d, 1878, he was authorized to have executed, covering all the property and franchises of this company, acquired or to be acquired, including its franchises to be a corporation, for the purpose of bor-

rowing six hundred thousand dollars and issuing bonds bearing six per cent. interest per annum and payable thirty years after date.

On motion of Mr. P. Fourchy, duly seconded, the amount of the bonds to be secured by mortgage is reduced from six hundred thousand dollars to five hundred thousand dollars, and with
140 this modification the form of the mortgage was unanimously adopted, to be executed as prescribed by said resolution of July 22d, 1878.

I hereby certify, that the above is a true and correct transcript from the minutes of the company.

ALEX. BONNEVAL,
Secretary.

Special Meeting of the Board of Directors of the New Orleans Water Works Company.

NEW ORLEANS, *July 22d*, 1878.

The board met this day, pursuant to the call of the president, at the office of the company, No. 47 Camp street.

Present: Messrs. E. Toby, pres't; P. Fourchy, James D. Edwards, ad'r of water works and public buildings; W. W. Washburn and P. Sala.

Absent: His honor, Ed. Pilsbury, mayor, and J. C. Denis, ad'r of finance.

The minutes of the last meeting were read and approved.

On motion, duly seconded, the following resolution was unanimously adopted:

Whereas, section 9 of the act No. 33 of the extra session of 1877 provides that the board of directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works and increasing the supply of pure water; and to accomplish this purpose the board of directors are hereby authorized to issue the bonds of the company to the amount not exceeding two millions of dollars, in such sums, on such terms and bearing such rate of interest as said board may determine, and the payment of said bonds, in principal and interest, may be secured by mortgage of all the property and franchises of said company, including its franchise to be a
141 corporation, and said mortgage may include the property and franchises of said company acquired or to be acquired, and the registration of said mortgage in the office of the recorder of mortgages for the parish of Orleans shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it without reinscription: provided, however, that *not* bond shall be issued or mortgage given without the consent of the council of the city of New Orleans, and said bonds shall not be sold or disposed of, except on such terms as shall be approved by said council of said city.

Therefore, the president of the company is hereby authorized to have an act of mortgage executed covering all the property and franchises of said company, acquired or to be acquired, including its franchise to be a corporation, for the purpose of borrowing six hundred thousand dollars, and issuing bonds bearing six per cent. interest per annum, payable in thirty years after date, and the payment of said bonds, in principal and interest, shall be secured by said mortgage, said bonds to be sold or disposed of at not less than par, and proceeds used exclusively for improving and enlarging the works of this company, within the five years limited by the charter, said act of mortgage and bonds to be signed by the president and secretary of the company in favor of Adolphe Schreiber, Esquire, or bearer.

And the president is hereby authorized to apply to the council of the city of New Orleans to obtain the approval and consent of said council, as provided for in said section nine of said act number thirty-three of the extra session of 1877.

I hereby certify that the above is a true copy of the minutes of the company.

ALEX. BONNEVAL,
Secretary.

142 Now, therefore, the said Edward Toby, president, and Alexander Bonneval, secretary, in their said several capacities, and in behalf of said New Orleans Water Works company, do hereby declare and acknowledge that the said New Orleans Water Works Company is justly and truly indebted unto the said Adolphe Schreiber, Esquire, of the city of New Orleans, in the full and true sum of five hundred thousand dollars, lawful money of the United States of America, unto the said New Orleans Water Works Company by said Adolphe Schreiber loaned and advanced for the purposes set forth in said act and resolutions, and for the reimbursement whereof the said Edward Toby, president, has made and subscribed, for and in the name of said New Orleans Water Works Company, one thousand bonds of five hundred dollars each, dated the first day of April, eighteen hundred and seventy-nine, payable thirty years after date to the said Adolphe Schreiber, or bearer, at the office of the said New Orleans Water Works Company, in this city, with interest thereon at the rate of six per cent. per annum from date till paid, which interest is represented by sixty coupons of fifteen dollars each, numbered from one to sixty, attached to each of said bonds, each coupon being payable semi-annually to the bearer thereof at the office of said New Orleans Water Works Company on the first day of April and October of each year, which said bonds have been countersigned by said Alexander Bonneval, secretary, and the impress of the seal of said New Orleans Water Works affixed thereto by him, and, after having been by me, notary, duly paraphed in order to identify the same herewith, have been delivered unto the said Adolphe Schreiber, hereto present, acknowledging the receipt thereof, and accepting these presents for himself and such person or persons who may eventually become the holder or holders of said bonds.

Now, in order to secure the full and final payment of said donds and coupons, the said Edward Toby, president, and Alex-
143 ander Bonneval, secretary, in their said several capacities and by virtue of the aforesaid authorization unto them conferred, do by these presents, for and in the name and in behalf of said New Orleans Water Works Company, specially mortgage, affect, and hypothecate unto and in favor of said Adolphe Schreiber and assigns, and such person or persons who may hereafter become the holder or holders of the aforedescribed bonds and coupons, the following described property, real, personal and mixed, rights, franchises, and appurtenances, to wit:

All and singular the property, real and personal, of whatever nature or kind soever, belonging to the water works constructed and established by the Commercial Bank of New Orleans, and subsequently by the city of New Orleans, and the dykes, mounds, reservoirs, machinery, and apparatus, engines, boilers, pumps, conduits, aqueducts, pipes, tools, and all appurtenances thereunto belonging or in anywise appertaining, and the following real estate, to-wit:

First. A certain square of ground, together with the reservoirs, buildings, and all other improvements thereon, and the rights, servitudes, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the Faubourg Annunciation, in the first district of this city, designated by the number eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated 15th day of March, 1807, which said square is bounded by Religious, St. Thomas—formerly St. John the Baptist—Richard, and Market streets, and it has a front on each of the said streets of three hundred feet.

And by a sketch made by Jules Allon d'Hemecourt, city surveyor, dated the 5th day of April, 1878, and annexed for reference to an act of transfer by the city of New Orleans to the New Orleans Water Works Company, passed before Gustave Le Gardeur, Jr., city notary, on the ninth of April, 1878, the said square is designated by the number eighty-three, and measures three hundred and nine-
144 teen feet eight inches and two lines front on said Religious street, three hundred and nineteen feet ten inches and one line front on Market street, and three hundred and nineteen feet ten inches and four lines on Richard street.

Second. A certain piece or portion of ground, together with the buildings and improvements thereon, and the machinery and apparatus, boilers, engines, iron chimneys, and all the rights, privileges, servitudes, ways, and appurtenances thereunto belonging, or in anywise appertaining, situated in the suburb Lacourse, in the first district of this city, in the square bounded by New Levee, Tchoupitoulas, Richard, and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hund[red] and eighty-three feet seven inches and three lines front on Richard street, and three hundred and eighty-three feet seven inches and three lines on a straight line running from the termination of the line on said New Levee street

to the termination of the line on said Tchoupitoulas street, parallel to Orange street, and dividing the said piece or portion of ground from the property now or formerly belonging to A. Caldwell and R. Toledano which form the remainder of said square, which is designated by the number thirty-nine on the aforementioned sketch made by Jules A. d'Hemecourt, according to which said sketch said piece or portion of ground measures one hundred and ninety-one feet six inches and six lines front on New Levee street, one hundred and ninety-one feet seven inches and six lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and two lines front on Richard street, and three hundred and eighty-three feet and eight inches on said line dividing the said piece or portion of ground from the property of Caldwell and Toledano.

Third. A certain square of ground, together with all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the first district of this
145 city, comprised within Peters—late New Levee—Water, Orange, and Richard streets, and designated by the number thirty-nine "A," as per plan drawn by Louis H. Pilie, surveyor, dated 29th June, 1867, and deposited, for reference, in the office of H. C. Dibble, then a notary in this city, as plan number nineteen, according to which said plan said square is divided into twenty-eight lots, numbered from one to twenty-eight, inclusive, and they measure as follows, to wit:

Lot number one forms the corner of Water and Richard street and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three [lines] in width in the rear by one hundred and nine feet and four inches in depth, and front- on Richard street.

Lots numbers two to eleven, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on Water street by one hundred and nine feet and four inches in depth between parallel lines.

Lot number twelve forms the corner of Water and Orange streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear by one hundred and nine feet and four inches in depth and front- on Orange street.

Lots numbers thirteen and fourteen adjoin each other and measure each twenty-six feet front on Orange street by one hundred and fifty-nine feet eight inches and four lines, more or less, in depth between parallel lines.

Lot number fifteen forms the corner of Orange and Peters streets, and measures twenty-six feet eight inches and six lines front on Peters street, twenty-six feet nine inches and four lines and a half in width in the rear by one hundred and nine feet and four inches in depth, and front- on Orange street.

Lots numbers sixteen to twenty-five, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on said Peters street by one hundred and nine feet four inches in depth between parallel lines.

146 Lot number twenty-six forms the corner of Peters and Richard streets and measures twenty-six feet nine inches and five lines front on Peters street by one hundred and nine feet and four inches in depth and front on Richard street.

Lots Nos. twenty-seven and twenty-eight measure each twenty-seven feet front on said Richard street by one hundred and fifty-nine feet eight inches and four lines in depth between parallel lines.

And by the aforementioned sketch, made by J. A. d'Hemecourt, the said square is designated by the No. twenty-one B, and measures three hundred and nineteen feet four inches and four lines front on Peters street, two hundred and seventy-two feet and eight inches front on Richard street, and the same front on Orange street, being the same property which the said New Orleans Water Works Company acquired by purchase from the city of New Orleans, by act passed before said G. LeGardeur, Jr., city notary, on the said ninth day of April, 1878, registered in the conveyance office of this parish in b'k 110, fo. 453.

And in these presents are especially affected and hypothecated all the property and franchises of said company, including its franchise to be a corporation, and all the property and franchises of said company acquired or to be acquired, and the registration of said mortgage in the office of the recorder of mortgages for the parish of Orleans shall operate on the property and franchises of said company wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it without reinscription.

The said real and personal property, rights and franchises are so to remain mortgaged and hypothecated until the full and final payment of the said bonds and coupons, the said Edward Toby, president, and Alexander Bonneval, secretary, hereby binding the said New Orleans Water Works Company and its assigns not to sell,

147 alienate, deteriorate, nor in anywise encumber any part or parts of the hereinbefore described and herein hypothecated real and personal rights and franchises to the prejudice of these presents, the whole of which is hereby accepted by the said Adolphe Schreiber for himself and any and all such person or persons who may become the holder or holders of said bonds and coupons.

By reference to the hereunto annexed certificate of the recorder of mortgages in and for this parish of Orleans, it appears that there are no other mortgages standing in the name of the said New Orleans Water Works Company and recorded against the aforedescribed premises than—1st, the draining privilege, and, 2d, the privilege in favor of Leeds & Co. for eleven hundred and fifty-nine $\frac{38}{100}$ dollars, interest, etc., for materials furnished city water works, per affidavit sworn to before John McCormick, second justice of the peace, dated September 19th, 1877, which said privileges the said Toby, president, and Bonneval, secretary, in their aforesaid capacity declare to be inoperative and null and voice, and with which declaration the said Adolphe Schreiber declares himself satisfied.

Thus done and passed in my office, at the city of New Orleans

aforesaid, the day, month and year first above written, in presence of Michel V. Dejan and Louis G. Elfer, competent witnesses residing in this city, who signed these presents with the said appearers and me, notary, after reading hereof.

(Original signed:)

EDWARD TOBY, *Pres'dt.*
ALEX. BONNEVAL, *Sec'ry.*
A. SCHREIBER.
MICHEL V. DEJAN.
LOUIS G. ELFER.
JAS FAHEY, *Not. Pub.*

148 Office of the Recorder of Mortgages for the parish of Orleans, in the city of New Orleans, State of Louisiana.

I, the undersigned, recorder of mortgages in and for the State and parish aforesaid, duly commissioned and qualified, do hereby certify that the within act of mortgage granted by the New Orleans Water Works Company, in favor of Adolphe Schreiber, has been this day duly recorded in my office, in book of Mortgages, No. 176, pages 130, 131, and 132, on the first day of April, A. D. 1879.

As witness my official signature and impress of the seal of the mortgage office at New Orleans on said first day of April, A. D. 1879.

[SEAL.] (Signed) J. G. RICHARDSON,
D'y Rec.

I, the undersigned notary, do hereby certify the above and foregoing to be true and correct copies as well of the original act of mortgage by said New Orleans Water Works Company to said Adolphe Schreiber as of the certificate of the recorder of mortgages for this parish appended thereto on file in the records of my office.

In faith whereof I grant these presents under my signature and seal of office at New Orleans this 5th day of November, A. D. 1879.

[SEAL.] (Signed) JAS. FAHEY,
Not. Pub.

149 EXHIBIT PETITION. Offered by Defendant. Filed May 12, 1888.

To the honorable civil district court for the parish of Orleans:

The petition of the New Orleans Water Works Company, of the parish of Orleans, a company chartered by legislative enactment, with respect represents—

That A. A. Maginnis' Sons, a firm composed of A. A. Maginnis and J. N. Maginnis, of New Orleans, are indebted unto petitioners in the sum of five hundred dollars, as per annexed bill, made a part hereof, to wit, for water furnished and to be furnished from October 1st, 1882, for the term of twelve months from said date, at their place of business, Nos. 85, 87 Commerce street, in said city; that said sum, according to the rules and regulations of said company as communicated at the time to said parties, is due from the first of

October, 1882; that the supply of water furnished by petitioner to said parties, tested under the stipulations of the charter aforesaid, is worth considerably more than five hundred dollars, which petitioner claims on a *quantum meruit*.

Wherefore petitioner prays that A. A. Maginnis and J. N. Maginnis be cited, and that they be condemned to pay unto petitioners the sum of five hundred dollars, with legal interest from judicial demand; prays for general relief, and, as in duty bound, etc.

(Signed) ALBERT VOORHIES, *Att'y.*

A true copy.
E. A. CLARK, *D'y Cl'k.*

150 *Statement. Offered by Defendant May* 12, 1888.

NEW ORLEANS, *January 26th*, 1888.

W. S. Benedict, Esq., att'y-at-law, city.

DEAR SIR: In looking over our books we find the following water-works bills paid as enumerated below:

For supply of water,	Sept. 30th, 1874,	to	Oct. 1st, 1875		$300 00
"	" 1875,	"	1876		300 00
"	" 1876,	"	1877		300 00
"	" 1877,	"	1878		300 00
"	" 1878,	"	1879		300 00
"	" 1879,	"	1880		300 00
"	" 1880,	"	1881		300 00
"	" 1881,	"	1882		300 00
"	" 1882,	"	1883		
"	" 1883,	"	1884		
"	" 1884,	"	1885		
"	" 1885,	"	1886		
"	" 1886,	"	1887		
"	Sept. 10th, 1887,	Sept.	30th, 1887		33 35
"	" 30th, 1887,	Oct.	1st, 1888		600 00

Yours respectfully,
(Signed) CHAS. B. MAGINNIS.

151 *Contract of Agreement. Offered by Defendant* 12 *May*, 1888.

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this third day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the 108th, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Simon Hernsheim, Esq., a member of and herein representing his commercial firm of S. Hernsheim &

Bro., of the first part, and John H. Maginnis, Esq., herein representing Maginnis Oil & Soap Works, of the second part, all of this city of New Orleans.

Which said appearers declared that, acting as aforesaid, they have entered into, and do by these presents enter into, the following contract of agreement, to wit:

Whereas permission has been granted by the city council of New Orleans to said parties of the first part to lay a waste and water pipe each for their factory, on the corner of Julia and Magazine streets, to the Mississippi river; and whereas the said party of the
152 second part desires to participate in the benefit derived from the laying of said pipes:

Therefore it is mutually agreed between said party of the first part and said party of the second part representing their respective firms or companies—

That said firm of the first part shall cause said pipes and connections to be made and all works thereto appertaining, the gross expenses to be equally borne by said respective firms or companies of the first and second parts, said party of the second part binding his said company to pay said firm of the first part its *pro rata* as the work progresses.

That in the event at some future date other parties may wish to make connections with the main pipes, and the said parties hereto agree to their so doing, it is well understood and now stipulated that both said firms or companies herein represented are first to agree on the prices to be charged said party or parties, and each firm or company shall divide the amounts so received from the prices charged.

It is also understood and agreed upon herein that the Maginnis Cotton Mills shall have the privilege, if they so desire, of connecting their pipe from their Cotton factory, said connection to meet at the corner of Julia and Foucher streets, after which connection the expenses shall be borne in the proportion of one-third each to said firm of the first part, said company of the second part, and the Maginnis Cotton Mills.

Thus done and passed in my office, at New Orleans aforesaid, the day, month, and year first above written, in the presence
153 of John W. Lane and Bussiére Rouen, witnesses of lawful age domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Original signed) S. HERNSHEIM.
JOHN H. MAGINNIS, *Pres't.*
J. W. LANE.
BUS. ROUEN.
W. J. CASTELL, *Not. Pub.*

I certify the above and foregoing to be a true copy of the original act extant in my current register.

[SEAL.] In faith whereof I grant these presents under my signature and the impress of my seal of office.

New Orleans, 19th April, 1884.

(Signed) W. J. CASTELL, *Not. Pub.*

Ordinances Nos. 419, 68, and 148, referred to in examiner's return, copied as pages 312, 313, 316 of this Transcript.

Testimony Offered by Complainant May 12, 1888.

United States Circuit Court, Eastern District of Louisiana.

154 THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE MAGINNIS OIL & SOAP WORKS. } No. 11565.

Testimony taken on behalf of the complainant, under the 67th rule, as amended, of the courts of equity of the United States, before Edward R. Hunt, special examiner duly appointed and qualified to take the depositions in the above cause.

NEW ORLEANS, *January* 21*st*, 1888.

Present: J. R. Beckwith, Esq., solicitor for the complainant; W. S. Benedict, Esq., solicitor for the defendants.

The solicitor for the complainants offers in evidence, 1st, the act No. 33 of the extra session of the Legislature of Louisiana of the year 1877.

2nd. The act No. 43 of the acts of the Legislature of the State of Louisiana for the year 1878, being act approved February 28th, 1878, constituting the charter of the complainant company.

3rd. The act No. 56 of the acts of the Legislature of the State of Louisiana for the year 1884, being an act entitled "An act to incorporate the Commercial Bank of New Orleans," being an act of the Legislature approved April 1, 1833.

4th. The notarial act of conveyance by which the Commercial Bank of New Orleans conveyed the water works to the city of
155 New Orleans, an attested copy of which will be furnished and filed.

5th. An attested copy of a notarial act entered into between the city of New Orleans and the New Orleans Water Works Company before Joseph D. Taylor, notary public of the parish of Orleans, on October 3, 1884.

6th. An attested copy of the ordinance of the city of New Orleans, being council series No. 68, approved January 18, 1883.

7th. The ordinance of the city of New Orleans, No. 419, council series, approved September 1, 1883.

8th. The ordinance of the city of New Orleans, council series 148, approved March 1, 1883.

9th. An attested copy (to be furnished) of the notarial act of transfer of the water works from the city of New Orleans to the New Orleans water works, from the city of New Orleans to The New Orleans Water Works Company, complainant herein.

10. So much of "plate 1" of Robinson's Atlas of the City of New Orleans, of the date of 1883, as is included on the right-hand page of said plate, an attested tracing to be furnished and filed.

A. A. MAGINNIS, a witness produced, sworn, and examined on behalf of the complainant, deposes and says:

By Mr. BECKWITH:

156 Q. Will you please state on what block the premises in question, upon which the oil & soap works are erected, is located?

A. The entire business of the Maginnis Oil & Soap Works is located, one portion on the square bounded by New Levee, Commerce, Julia, and St. Joseph streets, and the other portion is bounded by Julia, Tchoupitoulas, Commerce, and St. Joseph streets.

Q. At what date did you run the pipe to the river and commenced pumping water to your establishment?

A. I cannot tell you the dates.

Q. Can you approximate it?

A. I judge about 4 years ago. We have the dates somewhere in the papers here—some time in October, 1884. That was when the water was shut off.

Q. Can you tell about when you commenced pumping water through the pipe?

A. In October, 1884. It was drawn before that, but it then commenced actual use.

Q. What is the size of the pipe? Where does it run?

A. It is a 6-inch pipe.

Q. How does it reach the river from your premises?

A. It goes out through our front-door connections, and from there it goes through Julia street to the Mississippi river.

Q. Where do you take the water from the river?

A. We take the water at the foot of Julia street or near it.

Q. If a line of prolongation was extended out through Julia street to the river would the pipe follow within these lines?

157 A. That I cannot tell unless I measured it.

Q. Can you tell approximately?

A. Well, I should judge it was about the foot of Julia street. It might be to either side; I cannot tell.

Q. You mean the river end of Julia street?

A. Yes, sir.

Q. What appliances do you use, if any, to draw the water from the river in that pipe?

A. A suction pump.

Q. Of what capacity?

A. It is about an 8-inch suction pump, and another pump of 3 inch—two pumps, which I use alternately.

Q. By what power are these pumps operated?

A. By steam power.

Q. Was the use of the pipe continuous from the time that you first started it up to the time of the injunction in this case?

A. Yes, sir.
Q. For what purpose was the water used?
A. It was used for boiler purposes—steam purposes.
Q. Was it used for any other purpose?
A. Yes, sir; to supply the mules and to give the men drinking water.
Q. Was it used in the manufacture of soap?
A. Yes, sir; it had to be used, because we used steam for that.
Q. The same water?
A. Yes, sir; the same water.

158 Cross-examination.

By Mr. BENEDICT:

Q. Why was it that you applied to the city of New Orleans to obtain this permission to take up a portion of the street and relay it at your own expense to get water from the Mississippi river?
A. We done that for economy first. The second was that we concluded that the rates charged us by the water works Co. were to high.
Q. What rates had you been paying the water works Co. and for what length of time for that factory?
A. That I cannot tell unless I referred to it, because I do not attend much to the bills of the office. My work is above.
Q. For what length of time had that factory been in operation—receiving water from the water works Co.?
A. We commenced, I think, in 1872 on this ground.
Q. What was the general rate charged you from that time up to the time you applied to the city to get water from the Mississippi river?
A. That I cannot tell you. I have never remembered it.
Q. Do you not remember the rate?
A. No, sir.
Q. What difference of rate was demanded of you about 1883 or 1884 by the water works Co., or what proportion did it bear to what you had already paid?
A. It was quadruple, I think.
159 Q. Had there been any change in the business of your factory by reason of which you used more water in 1882 and 1883 than you had previously?
A. No, sir.
Q. At whose expense was this pipe laid to the river?
A. At the expense of S. Hernsheim & Bro. and our firm, A. A. Maginnis & Sons.
Q. How were the pipes laid—on the public street?
A. Yes, sir; they were laid on the public street.
Q. How were they laid—under the street or over it?
A. Under the street.
Q. Were the pavements taken up?
A. The street was taken up and thoroughly relaid, and put back in good order.

Q. At the joint expense, you say, of S. Hersheim & Bro. and A. A. Maginnis Sons?

A. Yes, sir.

Q. I understand that the Maginnis Oil and Soap Works was acquired from A. A. Maginnis Sons.

A. Yes, sir.

Q. How wide is the Mississippi river at that point from which the water is taken?

A. I do not know. I should judge from ¾ of a mile to a mile.

Q. Is it a deep stream?

A. It is supposed to be 200 or 300 feet deep.

Q. Does it contain sufficient water to enable your factory to make use of it at your own pleasure, without any detriment to any-

160 body else?

A. Yes, sir; it does.

Q. Why did the water works Co. turn off the supply of water it had been furnishing to you prior to October, 1844?

A. Why did they do it?

Q. Yes.

A. They never gave any just reason for doing it. They done it without making a final demand in October. After business hours on Saturday they cut it off, leaving a notice in the watchman's hands in the factory that they would do it that night in my absence.

Q. Had they at that time instituted any suit against A. A. Maginnis Sons or against Maginnis Oil & Soap Works, claiming an increase of price for the water used?

A. They had sent us notice that they would shut it off upon a certain day.

Q. Did they bring any suit at law against you or Hersheim?

A. Not that I know of. I am not aware of any suit brought previous to that time.

Q. How long during the year does your works operate?

A. You mean now or then?

Q. I mean in 1882, 1883, 1884, 1885, 1886, 1887. Take the average of all these years.

A. In 1882, 1883, and 1884 I think we run 4 or 5 months in the year.

Q. During the remainder of the year did you have occasion to use the water from the water works Co.?

161 A. We were using it whenever we had steam up in our premises, and using it for the purpose of drinking and supplying our mules when the mill was stopped.

Q. A fair average, then, would be 4 months per annum?

A. Yes, sir; 4 months per year; during that time we did not run it as steady as we do now.

By Mr. BECKWITH:

Q. Was there any dispute between you and the water works Co. about the payment for water between 1882 and 1884?

A. Was it between 1882 and 1884 that Mr. Toby was manager of the water works Co.?

Q. Was there not, at the time you say the water was shut off, a disputed bill?

A. That was in October, 1884; October 2, when Mr. Gardner reminded me of it.

Q. There was a disputed bill between you and the water works Co.; you would not pay the water rates; you disputed the bill, because you said it was too much?

A. When—who was manager of it?

Q. Mr. Baldwin succeeded Mr. Toby in 1881?

A. Yes, sir.

Q. Was there not at that time a dispute?

A. After Mr. Toby went out the water works Co. presented a bill which we disputed.

Q. It is a disputed question between you now, about that water?

A. Yes, sir; it is still in court.

162 Q. Now, exactly what time did the oil & soap works pass from A. A. Maginnis' Sons to the corporation?

A. I ca-not recall it to memory.

Q. Can you not approximate it?

A. No, sir; I cannot even tell you the year.

Q. Nor about how long ago it was?

A. The date of the charter would give that. I could not call the year if you asked me.

L. H. GARDNER, a witness produced, sworn, and examined for the complainant, says:

By Mr. BECKWITH:

Q. What is your age, and what position do you occupy in relation to the water works Co., complainant?

A. I am superintendent of the water works Co.

Q. How long have you been so?

A. Since July, 1883, I think.

Q. Do you know the location of the Maginnis Oil & Soap factory?

A. Yes, sir; I do.

Q. Do you know the system of distribution made and the pipes of supply of the New Orleans Water Works Co. in that vicinity?

A. Yes, sir.

Q. What is the distribution there? What are the facilities for supplying premises or factory with water from the water works?

163 A. There is an 8-inch main on Tchoupitoulas street and a 4-inch main on Julia street.

Q. With which main was the connection made at the time the company was supplying these works with water?

A. The 8-inch main on Tchoupitoulas street.

Q. How is that main fed and what are its connections?

A. From the square on which our pumping machinery stands there is a main, I think, 36-inch, that feeds the 18-inch main on Tchoupitoulas street down to Calliope street; that 18-inch main is

then reduced for a square or t-o to a 12-inch main, thence down to Canal street to an 8-inch main.

Q. What is the capacity of that main to deliver water on the defendant's premises?

A. It is sufficient. It has supplied them and is now supplying them.

Q. How many thousand gallons do you think could be delivered on these premises per day from that main?

A. I could not tell you that without going into a calculation upon it.

Q. What is the day and night pressure on the mains of the water works Co.?

A. The pressure due to 60 feet head in the day-time between 6 o'clock in the morning to 6 o'clock in the evening, and a pressure due to 30 feet head from 6 o'clock in the evening to 6 o'clock in the morning.

Q. Do you know anything about the cutting of the water
164 off the defendant's premises?

A. It was cut off on October 4th or 5th, 1884. I think it was done on Sunday.

Q. Do you know whether or not there had been a dispute or difference between the company and the proprietors of these premises relative to the water rates at that time?

A. There had been. The water rate was increased, and Maginnis' Sons declined to pay it. They said they were overcharged and declined to pay it, and we cut off the water at that time to prevent them enjoining us from doing so.

Cross-examination.

By Mr. BENEDICT:

Q. Have you had charge of the accounts of the New Orleans Water Works Company?

A. No, sir; the secretary and treasurer has charge of the accounts.

Q. Did you not at one time have charge of them?

A. Yes, sir.

Q. You have reason to believe that they are still under the control of the company?

A. Yes, sir.

Q. Then your company also possesses the records of the old Commercial Water Works Company during the time it was operated by the city?

A. Yes, sir; I think some of the books are there.

165 Q. Do you know who had been the secretary of the old water works Co. before the incorporation of the present company?

A. I do not.

Q. Do you know whether or not Mr. Toby had been secretary and president or an officer of it?

A. I do not know.

Q. You had some correspondence, had you not, with A. A. Maginnis' Sons prior to cutting off their water, in October, 1884?

A. I do not remember having any correspondence with them. I know I had several conferences with them on the general subject.

Q. Do you not remember, either at a conference or by virtue of correspondence, it had been agreed that the matter of the increase of charge from $300 a year, which had been paid by that factory for many years, to $1,000 a year, which was demanded of them by your company, should be settled by the determination of the court?

A. I do not.

Q. Do you not remember that Judge Albert Voorhies, the then counsel of your company, then acting under some instructions to that effect, instituted an action in the State courts to determine whether your increased demand was proper or otherwise?

A. My recollection of the matter is that Judge Voorhies brought an action for a water supply.

Q. Do you remember whether or not he first brought a
166 suit based upon a contract between the company and Maginnis' Sons, the defendants?

A. I do not know the character of his pleadings.

Q. Do you not know that he subsequently amended his pleadings in which he asked $6,000 instead of $3,000 as based on a *quantum meruit*?

A. Yes, sir.

Q. Do you not know that both of these suits are still pending?

A. I think that the matters between the water works Co. and Maginnis' Sons were settled upon their promise to pay $600 a year.

Q. At the present time the defendants are taking water from the complainant under an agreed valuation, are they not?

A. Yes, sir.

Q. And they have since the preliminary writ of injunction has been issued here?

A. They have been taking water from us at that rate since September 10th, 1887, to 1888, this year and $\frac{2}{3}$ of a month.

Q. I find among the papers a copy of a letter addressed to your company, A. A. Maginnis' Sons, dated November 21, 1882, where you had made a demand for an increased price for water for that factory. Can you find among your papers that original letter and the other correspondence that was had between your company and these gentlemen?

A. Yes, sir; I think so.

Q. I wish you would, at your leisure, do so.

167 A. Yes, sir; covering what particular dates?

Q. I want all the correspondence between you and A. A. Maginnis' Sons or the Maginnis Oil & Soap Works.

A. Yes, sir; I will furnish them.

Q. Will you be kind enough to place of record the gross receipts of the water works company for each year as well as the expenses for each year and the costs therefor, in order that the court may determine what has been actual and necessary outlays, and these receipts, to be determined whether the limit of 10 per cent. had been

reached or over it had been reached? Will you furnish such a statement?

A. Yes, sir.

The solicitor for the complainant reserves the right to object to such a statement as evidence when produced.

Q. Will you, at the same time, make out a separate statement showing, out of the expenses so paid by the water works company during these various years, what amount is charged to new works of the company? What I mean by new works is the construction of new mains, of new works, or extraordinary repairs made to old works.

A. Yes, sir.

Q. Is there any other water works Co. in existence in the parish of Orleans?

A. None.

Q. Granting that every inhabitant of the city of New Orleans and each and every factory are subscribers to and are obliged to
168 take water from your company, have you such machinery and apparatus employed as would enable you to fully supply them if the factories worked to their best ability and every inhabitant continually made use of their water?

A. We have.

Q. For the entire boundaries of the city of New Orleans?

A. Yes, sir; we have, within reach of our mains.

Q. Will you furnish me a short sketch showing me generally the 4 boundaries of your line of mains; as, for instance, from the Exposition to the Barracks and the river to the swamps?

A. Our mains extend from Webster street, near the city park, up town, to Piety street, down town, and from the river back, irregularly, as far as Broad street—that is, in some localities, and not so far elsewhere. The extension towards the rear of the city is irregular.

Q. Does not your company require that the expenses incumbent upon the placing down of new mains shall be borne by the parties who are desirous of obtaining water where you have no mains at present?

A. No, sir.

Q. Is not a charge made by you for such works done and performed?

A. No, sir.

Q. Do you not also require that a certain number of persons shall contribute or certify that they will take water from your company in the event that you consent to lay the new mains to supply
169 them?

A. It is a feature in the charter that the company is required to make these extensions whenever a guaranteed revenue of 10 per cent. is pledged.

Q. Is that embraced in your charter?

A. It is.

Q. Do you know whether or not Julia street is a wide public highway?

A. I do.

Q. There is not much traffic or travel upon it?

A. A great deal.

Q. Where?

A. The whole length of the street, from the new basin to the river—a very great deal of traffic on that street.

Q. It is a cobble-stone street, is it not?

A. Part of the way.

Q. Are there any other streets in that immediate vicinity used for commercial purposes on account of being paved with square block?

A. Yes, sir.

Q. Do you know of any special buildings or factories fronting Maginnis Oil & Soap Works towards the river?

A. There are some rive mills in the vicinity, and Hernsheim's tobacco factory.

Q. I am speaking of from the defendant's works down to the river.

170 A. The ice works and McCan's foundry. These are the only two large establishments that I now recall.

Q. Do these factories use water from the complainant?

A. McCan's foundry does, and the People's Ice Company does not.

Q. Upon what basis do you assess your charges for water as against families?

A. Well, I have been guided by the printed tariff to a large extent, but do not charge the full amount that the tariff prescribes.

Q. Is there not a scale of charges arbitrary to yourself?

A. I think not.

Q. Then upon what basis do you make the charges?

A. The basis of the tariff that guided the city of New Orleans in its charges when the water works belonged to the city.

Q. Has your company followed that tariff of charges?

A. We have not; we have in all cases gone under it.

Q. Have you not altered the tariff of charges that the city had according to your own pleasure?

A. They have in reducing the rate; not in increasing it.

Q. By reference to your books you find that Maginnis' Sons have been paying you for 10 or 15 years $300 for the same quantity of water that they are having now. Why, then, do you assess them $1,000?

A. By the correction of an error.

Q. How do you know that?

A. Because if they were paying $300 a year for a quantity

171 of water that was worth $1,000 it was assumed that there was an error in the previous inspection.

Q. Upon what fact do you base your conclusion that there was an error?

A. The examination of an expert.

Q. Who was the expert?

A. William Golding.

Q. How did he make that examination; what examination did he make?

A. I do not know; he simply made his report.

Q. Then upon the report of your own employé you increased the price from $300 to $1,000 a year?

A. Yes, sir.

Q. Mr. Toby was president of the water works Co. after it was organized, in 1877?

A. Yes, sir.

Q. When he acted in fixing the rates for water did he do it of his own volition or did he do it by virtue of the authority vested in him by his board, and did you not continue that line of conduct?

A. I do not know what powers the board gave him.

Q. Will not the minutes or the resolutions of your body show?

A. I think not.

Q. Why not?

A. I do not know why not.

Q. Did you ever examine into the matter?

A. Not on that point.

172 The further examination of witnesses was here adjourned to Saturday, January 28th, 1888, at 12 o'clock m.

NEW ORLEANS, *January 28th*, 1888.

THE NEW ORLEANS WATER WORKS COMPANY *vs.* MAGINNIS OIL & SOAP WORKS. } No. *No.* 11565.

Testimony for the complainant resumed this day as per adjournment, the respective solicitors being present.

L. H. GARDNER, a witness for the complainant, recalled, says:

The New Orleans Water Works Company is now claiming from the Maginnis Oil & Soap Works the sum of $1,550 on back water bills, being for the years from 1882 to 1883, $500; from 1883 to 1884, $1,000, and from 1883 to 1884, for a stable, $50.

By Mr. BENEDICT:

Q. Have you, since last week when you were on the stand, endeavored to supply what was called for from the books of the company? What return do you make?

A. I have here the statements of the company—its receipts and expenditures—for the years ending on the 8th of April, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887.

Mr. Benedict offered all of the above statements in evidence in connection with the testimony of this witness in order to show that the same are the returns of the company as made to the stockholders of the company.

173 Q. There was also requested of you another statement relative to the special improvements made by the New Orleans Water Works Company since 1877. As return for the second request made of you, you furnish the same in the return to the first request, which is to be found under the head of "new improvements," or improvements and extensions.

Witness now produces all the correspondence, *pro* and *con*, that has passed between the water works Co. and the defendants, as far as can be found, all of which are offered in evidence and numbered from 1 to 9 respectively.

The solicitor for the complainant objects to the documents produced by Mr. Gardner being offered in evidence under the call made upon him, on the ground that they are irrelevant and tend to prove or establish no issue triable in this case.

By Mr. BENEDICT:

Q. At what rate were these bonds floated?

A. Not below par.

Q. What amount is now outstanding?

A. $395,000.

Q. Has the company taken up all the others that were outstanding previously?

A. There were none outstanding previously.

Q. Then, all told, the number of bonds outstanding to date is $395,000?

A. The total from the first of April, 1878, to date is $395,000.

174 Mr. Beckwith, for the complainant, offers in evidence a copy of the mortgage securing the bonds issued by the company, and it is agreed that the printed copy now furnished and filed shall be accepted in proof of the original.

It is further agreed between counsel that the time for taking testimony in this case shall be extended two months from the date hereof, January 28th, 1888.

It is further agreed that either side may obtain transcripts of the depositions taken in the case of The New Orleans Water Works Company *vs.* The Southern Brewing Company, No. 11351 of the docket of the circuit court of the United States for the eastern district of Louisiana, as taken and returned by the examiner in that case, and file the same in this case, to be used as evidence taken in this case.

Adjourned to Saturday, February 4th, 1888, at 12 o'clock m.

THE NEW ORLEANS WATER WORKS COMPANY *vs.* THE SOUTHERN BREWING COMPANY. } No. 11351.

The deposition of James D. Houston, taken in the above case and by agreement between the respective solicitors in the case of The New Orleans Water Works Company *vs.* The Maginnis Oil & Soap Works, No. 11565, is introduced here and offered in the cause as if originally taken herein. See page 189 of this Transcript.

175 *Testimony Offered and Filed by Defendant, May 12th, 1888.*

United States Circuit Court, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE MAGINNIS OIL & SOAP WORKS. } No. 11565.

Testimony taken on behalf of the defendant under the 67th rule, as amended, of the courts of equity of the United States, before Edward R. Hunt, special examiner, duly appointed and qualified to take the depositions in the above cause.

NEW ORLEANS, *This 4th Day of February*, 1888.

Present: W. S. Benedict, Esq., for the defendant.
J. R. Beckwith, Esq., for the complainant.

JOHN H. MAGINNIS, a witness produced, sworn, and examined for the defendant, says:

By Mr. BENEDICT:

Q. You were formerly a member of the firm of A. A. Maginnis' Sons?

A. Yes, sir; and I am to-day.

Q. You were in business with your father, the late A. A. Maginnis, while he was operating?

A. Since 1858.

Q. Are you not now connected with the Maginnis Oil & Soap Works of this city?

176 A. I am president.

Q. Was the firm of A. A. Maginnis at any time sued by the New Orleans Water Works Co. concerning the water furnished to the oil & soap works they were then operating under that name?

A. Yes, sir.

Reference is here made to the suit of the Water Works Co. *vs.* A. A. Maginnis' Sons, No. 7962 of the docket of the civil district court for the parish of Orleans, division B.

Q. Were the Maginnis Oil & Soap Works operating in the same factory subsequently sued; if so, in what court?

A. Yes, sir; in the civil district, No. 20112 (the petition of which is now offered, a copy to be furnished).

Q. After, as has been stated by the complainant, the water from that factory had been cut off did you enter into any arrangement by reason of which application was made to the city council of New Orleans to enable you to operate your factory by obtaining water from the public navigable stream, the Mississippi river?

A. We made application to the city, together with Mr. Hernsheim, and permission was granted in the name of Mr. Hernsheim. We were mutually interested in the application, and we projected the laying of the pipe together previous to our application.

Q. Did the laying of the pipe or the subsequent use of it at any time interfere in any manner or in any degree the most remote with the use of the streets under which it had been laid?

177 A. I do not think it did; it did not interfere with the foot-passengers or anybody else; it was laid in such a way that it did not interfere with travel of any kind.

Q. At whose expense was that pipe laid from the respective factory of Hernsheim and Maginnis Oil & Soap Works to the river?

A. This pipe was laid at the joint expense of S. Hernsheim & Brother and A. A. Maginnis' Sons, or Maginnis Oil & Soap Works.

Q. Was there a notarial act made of the agreement between you and S. Hernsheim & Bro.?

A. Yes, sir.

Mr. Benedict offers the act referred to in evidence.

Also a copy of the charter of Maginnis Oil & Soap Works (to be furnished).

And it is admitted that so far as the factory and the use of water therein is concerned that said date fixes the change of ownership, and that at the date of the contract just offered the Maginnis Oil & Soap Works were in operation, and the work stated and specified therein had been done at the joint expense of S. Hernsheim & Bro. and A. A. Maginnis' Sons, the predecessors of the said Maginnis Oil & Soap Works now incorporated.

Q. I requested of you to give your attention to a question that I would like to ask you as a witness in this case, and that was that during the number of years past to remember and ascertain exactly the amount of each annual claim made by the water works company for water used in your factory. Have you made such a statement?

178 A. I have.

Q. Is the statement that I now show you the one that you prepared; and, if so, is it or not correct?

A. The statement which I now hold in my hand is correct.

Q. The amounts specified therein are the amounts charged against you at the various dates for the various years specified?

A. Yes, sir.

Q. And paid by — and your firm and by your father and by the present corporation?

A. Yes, sir. The amounts specified in this statement are the exact amounts paid the New Orleans Water Works Co. commencing from September 30th, 1874; that statement is correct according to the books and the water works company's receipted bills.

The statement is offered in evidence by the defendant and marked "X."

Q. After the pipe leading to the river from your factory and in extending from your factory to Hernsheim's factory had been laid what did it cost your factory to obtain the water for its use and the use of the mill and washing purposes from the Mississippi river?

A. I do not think that our cost could exceed half a cent per 1,000 gallons. I think that would cover all expenses amply.

Q. Did it require any extra amount of steam or fuel or human power to operate the apparatus that would bring the water
179 from the river through these pipes?

A. Our requirements of steam for that purpose were very moderate; we run the pump very slow; you would hardly miss the steam required for that purpose, as our requirements of water were very much smaller than the capacity we had for pumping. The steam used in driving this pump was not missed at all by the other works; the actual cost was nothing.

Q. Have you extended the use or required more water during the past 4 or 5 years in your factory than you did previously?

A. I do not think that our requirements were increased to any great extent, not to be considered so. It may be possible that during the past two years we have extended our time of work—possibly 30 or 40 days during the season—but our daily requirements are about the same that they have been for years past, no increase.

Q. What is about the time usually occupied during the year in the work of your factory; about how many months have you used water in the year for factory purposes outside of what would be required for the use of your animals?

A. Well, that is according to the crop of cotton and cotton seed and the heavy competition that we have had in the past for seed. I think that our working time would average from 4 to 6 months—not exceeding 6 months of each year. I think 6 months would be the extreme, but during the winter months we have had often to stop and start up again. After the first of May we run very little
180 until the beginning of the season again.

Q. Has there ever been any objection on your part to pay the New Orleans water works a fair equivalent for the water that you use in your factory?

A. We have always been willing to pay. I consider that we have paid a full equivalent for all the water that we consumed in our works; not only that I considered it fair, but this statement will show that it was always considered fair by all the managers of the water works Co.

Q. Was there any reason why a change should be made in the price of the water used in your factory as was made by the present water works company?

A. I see no reason why the water rate should be increased from what it had been always.

The testimony of this witness was taken under objection to each and every question and each and every answer, the objection being that all of said questions and all of said answers relate to matters not issuable or at issue in this cause, and not relevant to any matter at issue or controversy therein.

Cross-examination.

By Mr. BECKWITH:

Q. Can you fix approximately, to be corrected, of course, by the copy of the charter of the defendant, the time when this oil & soap works passed from the partnership title into a corporation title?

181 A. The charter was passed some time in the spring of the same year, in April or May, 1884; the date of the charter will correct me.

Q. About how long after the act of incorporation was passed before the corporation created by that act took physical charge of the works?

A. Well, all the interest of A. A. Maginnis' Sons were transferred to the new corporation, in the act of incorporation. This particular charter was not specified in the transfer, because it was transferred through the books.

Q. What I mean to get at is the fee and title to the factory, lands, machinery, movable and immovable, as the property of A. A. Maginnis. Was that transferred to the corporation?

A. Yes, sir,

Q. In whom, then, did the title to the land on which the factory stands vest? Did it remain in A. A. Maginnis' Sons or did it pass to the corporation?

A. It passed to the corporation.

Q. When did you erect the Corliss engine which you are running with now?

A. I think it was about 1875.

Q. About what is the size of that engine?

A. I think it is 18 by 26. Nominally 150 horse-power.

Q. Do you know what pressure of steam you carry running that engine?

A. I think we carry on an average from 85 to 90 pounds.

182 Q. Do you know the number of revolutions per minute the engine makes?

A. I do not.

Q. It is a governing cut off, is it not?

A. Yes, sir; it is not a quick speed.

Q. You never did know?

A. I have known, but without any object of impressing the number of revolutions upon my mind to be positive about; I think in the neighborhood of 56 revolutions or from 56 to 60 revolutions; I think it is nearer 56.

Q. Now, where did you take your steam from to run this pump connected with the main to the river?

A. From the boilers; we only have one set of boilers.

Q. Do you know the size of the steam cylinder of that pump?

A. We had erected two pumps for operating from the river—one small Blake pump, cylinder 9 by 9, and one Knowles pump, cylinder 12, for fire purposes. The small Blake pump runs about 30 revolutions per minute, with 2½ in stroke; the Knowles pump, 6-

inch suction and 20 strokes per minute. That is about as slow as you can run the pump, and we run one or the other according to circumstances; we often run the small pump, but never use but one at a time.

Q. Do you remember the size of the water cylinder in the Blake pump?

A. I cannot tell you; it is 2½-inch suction.

183 Q. Do you know whether it is what was termed a tank pump, where the water chamber and the steam chamber are the same?

A. It is what is termed a tank pump, the Blake.

Q. In the Knowles pump, do you know the size of the water end?

A. No, sir; I judge about 9 inch.

Q. I understand you to say that these pumps can be run for nothing?

A. No, sir; I do not mean to say that they can be run for nothing. If it were necessary for us to get up steam to do all the work and, besides, to work these pumps, it would cost us something.

Q. But does not steam cost something any way? Do you blow it off your safety-valve or use it?

A. All the steam that we use costs to generate it, but all the steam used to work these pumps is very small.

Q. It represents a certain amount of fuel?

A. It represents a certain amount of fuel as far as it goes, but we furnish our own fuel in the shape of cotton-seed hulls. I consider that waste, costing nothing to supply it.

Q. Now, whereabouts on Julia street is this pipe laid? Is it in the roadway or under the sidewalk?

A. It is laid in the street, the roadway.

Q. I am now speaking to you relative to the main. That, you say, goes out from Hernsheim's?

A. I say it leads through the street to the river.

Q. It is laid under the roadway of Julia street?

A. Yes, sir; to the river.

184 Q. Can you state whether it was laid under the roadway or the sidewalk of Julia street?

A. It may be possible that it run under the sidewalk for a very short distance, but I am satisfied that 90 or 95 per cent. of the pipe in its whole length ran through Julia street in the roadway.

Q. When it reaches the levee what is its direction then in the prolongation of Julia street?

A. I am not positive about that, whether it runs straight on the line or whether it is passed round the side of the street, one side or the other; but I judge it runs straight. It may be possible that it runs under the railroad tracks, which would change the direct line.

Q. Do you know where the in-take end of the pipe is laid, whether inside the wharf or the outside?

A. The in-take end of the pipe is on the edge of the wharf. There it leads down to the water.

Q. Does this defendant corporation own any land from where the factory is located clear to the river?

A. It does not.

By Mr. BENEDICT:

Q. About what quantity of land outside of that owned by the factory is there built upon between the edge of the corporation property and the river? In other words, what is the length of the buildings outside of the corporation's property leading to the river?

185 A. I am not positive, but I do not think the length of the land covered by buildings would exceed 400 feet.

Q. When your factory was established what extent of buildings was there between its property and the river?

A. When our works were established there I do not think the buildings might exceed 250 feet. There have been buildings erected there since.

Q. Then the additional structures erected have been made from land formed by the accretion of the river?

A. When our property was erected on the present site the railroad property was batture. At the present site of the railroad and the building of W. G. Coyle was the batture—that is, after our present property was erected.

By Mr. BECKWITH:

Q. You do not mean to answer that the entire distance from the river end of the oil & soap works to the river is the small distance you have named in your answer?

A. No, sir; I mean to say that the distance built upon, all outside of this, is new land, made within the past few years.

Q. Do you call these few years geological years or calendar years?

A. Well, I should say 17 or 18 years.

Q. In the last 18 years the shore has advanced from Tchoupitoulas street to where it now is?

A. Yes, sir.

Q. How near was the river to Tchoupitoulas street *was the river* 15 years ago?

186 A. I should say, without being positive, in the last 15 or 18 years the river ran nearer to Tchoupitoulas street from 500 to 700 feet than it does now.

Q. What street was on the bank of the river 15 years ago? You know the streets out at the river?

A. Delta street was laid out at that time. It was impassible then when the street was laid out.

AMBROSE A. MAGINNIS, a stockholder in Maginnis Oil & Soap Works, being present at the foregoing examination of John H. Maginnis, states that he has heard the examination and if sworn would made the same answers to like questions, and adopts the above testimony of John H. Maginnis as his own, subject to the same objections as entered by the complainant to said deposition.

187 *Complainant's Evidence.*

United States Circuit Court, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
SOUTHERN BREWING COMPANY.

Testimony taken on behalf of the complainant, under the 67th rule, as amended, of the courts of equity of the United States, before Edward R. Hunt, Esqr., special examiner duly appointed
188 and qualified to take the depositions of witnesses in the above cause.

NEW ORLEANS, *May* 26, 1887.

Present: J. R. Beckwith, Esqr., solicitor for complainant; Alfred Goldthwaite, Esqr., solicitor for the defendant.

Mr. Beckwith, for complainant, offers in evidence the act of the Legislature of the State of Louisiana, approved April 1, 1833, establishing and chartering the Commercial Bank of New Orleans, and marked "B 1."

Also act No. 33 of the extra session of the Legislature of the State of Louisiana held in 1877, being the first act relating to the charter of the complainant, and marked "B 2."

Also act of the Legislature of the State of Louisiana approved February 26, 1878, entitled An act relative to the charter of the New Orleans Water Works Co., amending act No. 33 of the extra session of the Legislature of 1877, approved March 31, 1877, and marked "B 3."

Also an act of the Legislature of the State of Louisiana, being act No. 56 of the acts of 1884, marked "B 4."

Also an attested copy of a notarial act passed before Andrew Hero, Jr., notary public in and for the parish of Orleans, at that time the official notary of the city of New Orleans, on the 19th day of January, 1869, being act of transfer of property by the Commercial Bank of New Orleans to the city of New Orleans, marked "B 5."

Also a certified copy of a notarial act passed on the 9th day of April, 1878, before Gustave Lagardeur, Jr., notary public,
189 being an act of transfer of property from the city of New Orleans to the complainant, marked "B 6."

Also Soard's official map of the city of New Orleans, so marked.

Also a series of 19 attested copies of ordinances of the city of New Orleans, marked from B 7 to B 26, inclusive, being copies of ordinances granting licenses or authority to individuals and corporations to lay pipe for the pumping of water from the Mississippi river and the new canal and the Canal Carondelet.

Mr. Goldthwaite, for defendant, objects to the offer of the series of 19 ordinances made by the complainant on the ground that they are not relevant to any issue in this case made with the defendant; that whatever right of the complainant company has been violated by the city the city is not a party to this suit. Therefore these ordi-

nances are in no way connected with the defendant, and no attempt being made to connect the said defendant corporation in any way.

JAMES D. HOUSTON, sworn for the complainant, says:

By Mr. BECKWITH:

Q. What is your relation, if any, to the New Orleans Water Works Co., complainant in this case?

A. I am president of the company at the present time.

Q. To what extent, if any, are you a shareholder in the company?

190 A. I am shareholder at present of 1,020 shares. Formerly I was a shareholder of 4,320 shares.

Q. What was your interest in the company, if any, in 1884?

A. I was a shareholder to the extent of 4,320 shares of the stock. I know it was over 4,000. The hundreds I am not so positive about.

Q. Had you that interest in the company at the time of the adoption of act No. 56 of the act of the Legislature of 1844?

A. I had.

Q. Can you state your connection or relation, if any, with the notice published or with the promotion of the act No. 56 of 1884?

A. When I first became a director of the company, under the Toby administration, the city of New Orleans instituted a suit for the recovery of the tax against the company. A committee of the directors of the company was appointed, I think, on my motion, to wait upon the city authorities with regard to the matter. We did so, and in a discussion, which was published in the New Orleans newspapers, the authorities said they were compelled to sue for the water and for the tax, but would willingly pay the price of the water, which was much larger than the amount of the tax, but they did not see their way to do it under the circumstances. My recollection of what was published and what took place is that they said they would recommend an act to the Legislature looking to that end if it could be done. The administration of the water works

191 Co. was changed, and Mr. Baldwin became president. The suit was continued in the district court and came to judgment, which was in favor of the company, for the amount demanded in their reconvention or the value of the water. On appeal to the supreme court of the State it was decided that the value of the water furnished to the city should offset the amount of the taxes which the city endeavored to collect from the company. At that time I was a large owner of water-works stock, as I said before, and I considered the brokers on Carondelet street were doing all they possibly could to break down the stock for the purpose of freezing me out, as they termed it. I went to see Mr. S. P. Blanc, attorney-at-law, and asked him if he could draw up an act to enable the city of New Orleans to pay for the water it used, as I was confident I could get the city to recommend its passage. He drew up a notice of such an act for me, which he gave me. I took that notice with me, as I recollect it, to Baton Rouge, and afterwards sent it down to Mr. Gardner, who was connected with the company. I was a director

of the company at the time I speak of. I was president of the company, and I asked Mr. Gardner to have it published for me, which he did. On my return to the city Mr. Gardner handed me a bill from the Daily States office, which he had paid, for the advertisement, and I said to him that that bill was a private bill of my own; that it was a matter of my own that I was getting up, and that he ought not to have paid it. He said the company would benefit by it anyhow, and I better let it stand as it was for awhile.

192 Mr. Blanc delayed in writing the act and went on a trip North. I had an interview with him just before he went away, in which he said he would write this act on the cars and send it to me. He did write the act and send it to me, but at such a late date that it was impossible for me to take it to the city authorities to get them to pass an approval of it, as they said they would do. Several members of the city government promised their approval of it. At the time I refer to, when they spoke of approving the act, the city was under the bureau system, not the council, but the mayor and various administrators, and it was published in the newspapers. I had that act introduced into the Legislature and had it passed. The city attorney, Mr. Rogers, examined the act at Baton Rouge and recommended its passage, which was in accordance with the previous discussion of the administrators. My recollection is that in the previous administration of the government of the city Mr. Guillotte was administrator of water works and public buildings, and at the time of the passage of the act was mayor of the city. Mr. Guillotte, as mayor of the city, was at Baton Rouge representing the city with regard to legislation affecting the city; stated to members of the Legislature that it was the desire of the city that the act should be passed. That is all my connection with it, so far as I can recollect it now.

193 Q. Was this your individual act or the act of the board of directors?

A. My individual act as a stockholder who was trying to protect his property. I will state now that Mr. Blanc and I in the discussion doubted whether *it* act could be passed. My objection in giving the notice and in attempting to pass the act was more to stop the bear raid on the stock at the time than it was of hoping to get the act passed. That was the object of my mind at that time.

Q. Did the board of directors as a board act in any manner in the promotion of this act?

A. No, sir; in no way whatever.

Q. Was there ever a meeting of the board of directors or any deliberation or voting upon the act in any particular either before or after it was passed?

A. No, sir; after it was passed the board by an act accepted the contract by a vote of the board of directors.

Q. I say a meeting of the shareholders.

A. No, sir; neither before nor after.

Q. Then the stockholders have never taken any action whatever as shareholders relative to the promotion of the act or any contract under it?

A. No, sir.

Q. Can you state to what extent this scheme of the water works charter involved in the acts that now constitute the charter of the water works Co. took off the city of New Orleans its
194 debt?

A. I made up these figures, but I cannot recall them just at present. I will furnish them.

Q. Will you please furnish the amount at a future time?

A. Yes, sir; I can furnish that. I made the amount up and had it published at the time to stop the raid. It was the amount of the floating debt of the city of New Orleans retired by means of this charter of the water works Co. I will procure a copy of it for you.

Q. To what extent are you familiar with the prices of stocks and city securities as they have ranged within the last three or four years?

A. Well, I am familiar with the prices of almost all stocks for the last ten years. I am not now, but was familiar with them; but for the last year, or since I have been president of the company, I am not, because I am not speculating much.

Q. What has been the relative bearing of the market value of shares of the water works Co. into which the funded debt of the city of New Orleans was converted and the same class of city securities not converted into stock?

A. Well, the stock converted I see quoted to-day at 64, the amount it has been since 1872. The securities not converted will be worth to-day 110 or 112 in bonds bearing five per cent. interest anywhere—from 101 to 105.

Q. How have they relatively ranged for the last four, five, or six years?

195 A. The stock has always been below the bonds, but how much below I cannot say.

Q. You refer to the same class of bonds as were converted?

A. Yes, sir; five per cent. interest bearing bonds.

Cross-examined.

By Mr. GOLDTHWAITE:

Q. In May, 1884, you were a director in the water works Co.?

A. Yes, sir.

Q. What other position in the company did you hold?

A. Acting vice-president; there is no such office known to the charter, however.

Q. What were your duties as acting vice-president?

A. In the absence of Mr. Baldwin I signed the stock and the checks. I never exercised it until much later on.

Q. How long had you been acting vice-president prior to May, 1884?

A. I don't know that I was acting vice-president in May, since you put the question positively to me now. It was only when Mr Baldwin was going away that we contemplated such an office in the board. I was selected as the one that would sign in his absence. I

don't think it was in May, but it was after he went away that the duty was put upon me.

Q. Then, in the absence of the president, you were virtually president of the company?

A. Yes, sir; to sign and do such acts as the president himself would do.

196 Q. Were you the largest stockholder in the company?

A. Yes, sir; I think I was. I cannot say without referring to the books.

Q. Had you been the largest stockholder previously?

A. My impression is that I was, but I am not sure.

Q. Had you a great deal to do in directing the policy of the company?

A. Not more than any other member of the board. Wherever there was any money I was active to the best of my ability.

Q. You were active in the management of the company?

A. Yes, sir; I was very active in the management of my property.

Q. You say you went to Mr. Blanc to draw up that act?

A. Yes, sir.

Q. And he did draw it up?

A. I think so. He sent it to me. It was in his handwriting.

Q. It was the act as passed?

A. With some modifications made by the Legislature. What they were I don't know now.

Q. Had Mr. Blanc any connection with the city at that time?

A. None.

Q. Had he had any connection with the suit of the city of New Orleans against the New Orleans Water Works Co. which is now reported in the 36th of the Annuals? I mean on either side.

A. He had for the company.

Q. He represented the water works Co.?

A. Yes, sir; he represented the water works Co. Now, I
197 don't know whether that is a correct statement, for this reason: Mr. Blanc was employed by me as an individual and subsequently paid by the company, the same as Mr. Beckwith was employed by me in the case of the city of New Orleans against John A. Morris and a few years afterwards he was paid by the company. He returned me the money. He was employed by me as an individual first.

Q. He was on the side of the water works Co. in that litigation?

A. Yes, sir. Mr. Blanc has been my attorney in that litigation and has been my attorney in all things for the last eight years.

Q. Is Mr. Blanc still connected with the water works Co. as attorney?

A. No, sir; not as attorney. He represents the company in one suit—the suit I employed him in originally—the same tax suit, and the suits growing out of it.

Q. How long prior to the passage of this act had that suit been decided by the supreme court of Louisiana?

A. A very short time. It may have been over a month before

the act was passed, but not over a month before the notice was given.

Q. Had you seen Mr. Blanc about drawing up this act of 1884 prior to the decision of the supreme court of Louisiana in that case of the city of New Orleans against the water works Co.?

A. We had discussed it prior to that.

198 Q. Had you employed him to draw the act?

A. No, sir.

Q. Now, was it in consequence of that decision that this act was drawn up?

A. On my part?

Q. Yes; on your part.

A. Yes, sir; it was.

Q. Would you mind telling us why you considered it necessary to draw up that act or have it drawn up?

A. What was in my mind at the time was to prevent the breaking of the market. I really had no hope that the act would pass. What was in my mind was to prevent the breaking of the market.

Q. Did you succeed in your purpose of not letting the market break?

A. I don't think I did fully. I did to a considerable extent.

Q. Can you state to what extent?

A. Well, you ask me the effect of — thing I cannot know. I would have to know the mind of every person that bought and sold. That I cannot do. The break was not so bad as I had anticipated. Whether I overestimated what the break would be is a question I cannot answer.

Q. The ordinance which was passed by the common council of New Orleans to carry that act into effect was drawn up by whom?

A. By Mr. Blanc.

Q. At whose instance?

199 A. Mine.

Q. The contract which was made between the city of New Orleans and the water works Co. under that ordinance; who drew up that contract?

A. Mr. Blanc, I think. I would not be so positive as to that.

Q. Did you employ Mr. Blanc to do all that?

A. Yes, sir. I will state what took place. Mr. Blanc drew up the contract at my request, as an individual matter for me, with a written memorandum that if accepted by the water works Co. I would recommend the board to pay Mr. Blanc a fee in addition to what I had agreed to give him, but in nowise was the company bound.

Q. The company accepted the contract, did it not?

A. The company accepted it for the directors.

Q. Did the company pay Mr. Blanc a fee?

A. It did, on my recommendation. It was distinctly understood between Mr. Blanc and myself and reduced to writing that I was not authorized to represent the company or to bind it in any way. I done that in case Mr. Blanc should claim a fee and attempt to sue the company for it, as it was an individual matter of my own.

Q. Have you a copy of that agreement with Mr. Blanc?

A. I have not. Mr. Blanc is living in this city. I don't remember if I had the original or what has been done with it. It has been settled satisfactorily to both parties, and there has been no cause for me to look it up.

200 Q. How much fee did you pay Mr. Blanc?

A. I decline to answer that, as I do not think it is proper for you to ask.

Q. How much fee did the water works Co. pay Mr. Blanc?

A. That is a question I don't think I have a right to answer.

Q. Did that fee embrace his services in drawing the act which was passed through the Legislature and drawing the city ordinance which was passed by the common council and the contract that was made under that city ordinance?

A. No, sir. Mr. Blanc's fee was agreed upon by me. I think it was a fixed amount. I have no objection to state it if Mr. Blanc had no objection. It was to carry the case through that it—the previous case for taxes—Mr. Blanc drew this act up for me, and the ordinance, as he has done many other things, and I agreed that I would recommend to the company or try to get the company to pay Mr. Blanc a fee in addition to the fee that I had agreed to give him. That was to take in the suit to the Supreme Court of the United States and of the previous suits—that is, the tax suits and any suit that might arise under this contract if it was accepted by the company. That is what it was for, and was so stipulated in writing. I did not do it with any knowledge of anything growing out of the act at all. Mr. Blanc drew up tax acts for me and a great many other things that I had passed by the Legislature. It did not grow out of that or out of the contract; and the company subsequently paid Mr. Blanc not only an additional fee, but paid him the

201 fee which I had agreed to pay him, which are the facts. They agreed to do that on the ground that I, as an individual stockholder, should not have been put to that expense, although I had contracted for it and agreed to pay it. I think that is all you are aiming to get at, and I want to give you exactly what is the fact.

Q. With reference to the little bill for advertising the notice of that act, which was paid at the Daily States office—who paid it?

A. Mr. Gardner, I think.

Q. What position does Mr. Gardner occupy in the water works Co.?

A. I think he was secretary and treasurer at the time. I would not be positive. He may have been superintendent.

Q. How long had Mr. Gardner been secretary and superintendent of the water works Co? I mean about.

A. From July, 1882.

Q. How many directors were there in the water works company board in 1884?

A. Seven.

Q. How many were active in the management of the affairs of the company?

A. Generally five or six.

Q. Did you have regular meetings of the board of directors?

A. Monthly meetings.

Q. Generally what number was present?

A. Five or six.

202 Q. Can you tell us who they were?

A. Mr. Albert Baldwin, Henry Abraham, James D. Edwards, myself, the mayor of the city of New Orleans, the treasurer of the city of New Orleans, and the commissioner of public buildings and water works.

Q. Was Mr. Henry Abraham a large stockholder at that time?

A. I think he was what you would call a large stockholder, but not a large stockholder in comparison with me.

Q. About how many shares of stock?

A. I suppose between eight hundred and a thousand; possibly eleven hundred.

Q. And Mr. Edwards, was he a large stockholder?

A. He was not. I don't think he owned over a hundred shares, if he owned that many.

Q. There were no other individual directors, then, except Edwards, Abraham, and yourself and Baldwin?

A. Four individual directors, representing the stockholders of the company.

Q. Was Mr. Baldwin a large stockholder at that time?

A. I think not. It is a hard thing to tell what a man owns in a stock company. He frequently owns a great deal of stock that does not appear in his name, but upon the books of the company he was not a large stockholder at that time.

Q. The mayor, treasurer, the commissioner of water works and public buildings represented the shares of stock owned by the city of New Orleans?

203 A. No, sir; they represented the right given by the charter, which they would have even if the city had no stock.

Q. They were there in their public capacity?

A. Yes, sir; their public capacity.

Q. They had no private or personal interest?

A. Not that I am aware of.

Q. You stated in answer to a direct question that the city was willing to pay for the water used by the city, after the decision made by the supreme court.

A. Did I?

Q. Yes; I so understood you.

A. Well, I stated this: That the suit continued and came to trial in the district court. It was prior to that.

Q. It was prior to that that you state the city was willing to pay for the water?

A. Yes, sir; that the administrators present, in a formal discussion, so expressed themselves, and it was so published in the public prints.

Q. You say that was the common expression made in the city council?

A. From individual members of the board of administrators. The city was then under the board of administrators under the bureau system.

Q. It was, then, prior to the city charter of 1882?

A. It must have been, if that was the time of the charter.

Q. Did you ever have any expression after the charter of 1882?

204 A. With individual members.

Q. Then as to any willingness on the part of the city of New Orleans to pay for the water used by the city you derive your information from individual members of the city government and not from the council as a body?

A. No, sir; not from the body in its official capacity. That was a subsequent intimation. It was in an unofficial gathering of the members that this willingness to pay for the water used was expressed.

Q. Had it been a matter discussed at the city hall that the water works Co. was liable to city taxation prior to the institution of the suit, which was afterwards carried to the supreme court and is now reported in the 36th of the Annual Reports?

A. I am unable to give you any information with regard to it.

Q. Were you connected with the water works Co. at that time as a shareholder before the suit was instituted in the civil district court?

A. I could not say that unless I went to see the date of the entry of the suit.

Q. Now, when you speak of the city administration—of the city being willing to have some legislation on the subject—what do you mean by administration?

A. The mayor and seven administrators met a committee from the board of directors of the water works company in what they call a committee of the whole, and on an informal discussion

205 of the matter in that committee of the whole they expressed themselves that way and said there was no way in which they could legally do it under the laws as they stood.

Q. Do you know of any endeavor by the city of New Orleans, through its officers or legal advisers, to get any legislation from the State of Louisiana to enable them to make a contract with the water works Co.?

A. I know that the mayor recommended the passage of the act and so did the city attorney to members of the Legislature at Baton Rouge.

Q. The act of 1884, you mean?

A. Yes, sir.

Q. But I mean prior to that. Do you know of any endeavor on the part of the city of New Orleans or on the part of its officers or legal advisers to get any legislation on behalf of the water works Co.?

A. I am not aware of any.

Q. I understood you to say that you had not submitted this act to the council of the city of New Orleans before you had it introduced into the Legislature?

A. I did not on account of the lateness of the time at which I got it.

Q. Any approval then given by the mayor of New Orleans to that act or by the city attorney to that act was given not in the city of New Orleans but at Baton Rouge?

A. At Baton Rouge. They were there under a resolution
206 passed by the city council to represent the city before the Legislature as to any legislation they might see proper to make.

Q. Were you up at Baton Rouge during most of the session of the Legislature of 1884?

A. Yes, sir; I was.

Q. Were you there continuously?

A. All the time, with the exception of visits to the city to see my family.

Q. You were not a member of the Legislature, I believe?

A. No, sir; I am tax collector of the upper districts of the city of New Orleans; a State appointee. I was there looking after tax legislation.

Q. Did you have any authority from the water works Co. to represent them in any matter pertaining to the water works Co.?

A. None whatever.

Q. Were your expenses in part paid by the water works Co.?

A. Not a cent.

Q. After the passage of this act by the Legislature, did you have the ordinance to carry into effect that act introduced at the city hall in the city council?

A. I cannot say that I did have it introduced. I had the ordinance drawn up. My recollection is not clear whether I gave it to the member of the council who introduced it or not; most probably, however, I did.

Q. Did your attorney do it?

A. No, sir; it is probably I done it; but I cannot recall the fact that I did do it or not; most probably I did.

207 Q. Were you active in trying to get that ordinance through the city council—in using your influence?

A. Yes, sir; very active.

Q. Did you have any difficulty in getting it through the city council?

A. None whatever—that is, beyond the usual difficulty which attends these things in referring them to a committee, as to price and such things.

Q. It was first referred to a committee, I presume?

A. My recollection is that it was.

Q. Do you remember to what committee?

A. I think a special committee appointed for that purpose.

Q. Did you go before that committee?

A. I think I did.

Q. Once, or more than once?

A. I cannot remember now.

Q. When it was reported by the committee to the council did you

aid or give your active exertions in trying to secure votes in the council for its passage?

A. I was not active because no such activity was needed.

Q. I believe you are the chairman of the Democratic State Central Committee?

A. I am not. I am not even a member of the committee.

Q. I believe you have the reputation of being a gentleman of large political influence in the city and State?

A. I don't know; you could better testify to that than I could.

208 Q. Are you pretty well acquainted with the administration of affairs in the city of New Orleans?

A. I do not quite understand your question.

Q. Are you familiar with the administration of affairs in the city of New Orleans? Have you been connected with that administration?

A. Yes, sir; I have.

Q. In what capacity?

A. Administrator of improvements; elected in 1878, in November, and served until December, 1879, when I resigned.

Q. What other positions have you held?

A. I have been criminal sheriff of the parish of Orleans. I am now and have been State tax collector for the upper districts of the parish of Orleans since April or May, 1880.

Q. Have you had any occasion to secure legislation from the city of New Orleans?

A. In what way?

Q. Well, of any kind.

A. At times.

Q. Much or little?

A. Not much. I was interested in the passing of the ordinance with regard to the Municipal Gas Light Co. I was interested in the passing of the ordinance relative to the sanitary condition of New Orleans in cleaning the gutters. I was interested to some

209 little extent in the passing of the ordinance with regard to the small-pox hospital and in this water works Co. ordinance. I also assisted in the passage of the ordinance with regard to the New Orleans Exposition. These are all.

Q. I ask you if your general reputation is not that of an active, energetic, and influential politician?

A. Striking out the words "influential politician" and substituting "influential man," I will accept it.

Q. Well, I will say a public man.

A. Yes, sir; I am a public man in all things. I aid and assist in everything that comes in my way. I aided the last exposition by loaning them $3,000 out of my own pocket, because they told me that the doors would be closed at three o'clock that day if they did not raise the money. They came to me as a public-spirited citizen and I gave them the money. Perhaps it is that wherein my reputation consists.

Q. You spoke of the value of securities of the city at the time that the city bonds and securities were converted into stock?

A. Yes, sir.

Q. Do you remember what, at that time, was the value of city securities?

A. I had no connection with the water works Co., nor was I an owner of any city bonds or securities at the time you mention—say in 1878 and 1879. I done very little speculating at all then; but I refer to later dates.

Q. You had no knowledge whatever, you say, of the value
210 of the securities at the time that the city securities were converted into the stock of the water works Co.?

A. No, sir; I have no knowledge of them at that time.

Q. When did you first begin to take an active part in the management of the water works Co.?

A. I think some time in the year—I don't know what you mean by an active part.

Q. Well, as a director?

A. I think some time in 1880 or 1881, I am not sure which.

Q. In what condition did you find the stock at that time?

A. Be more explicit.

Q. Well, financially?

A. The company was paying its employees and the interest upon its bonds and paying a dividend. I think it paid two or two and a half per cent.

Q. During the time that you have been on the board, is it not a fact that you have been an active member of the board of directors of that company?

A. I hope so.

Q. Have you not in a large measure influenced the policy of the company?

A. No, sir; I cannot say that I have.

Q. How long have you been president of the company?

A. Since last July, 1886. I will state now that the president of this company receives no salary. It has been customary for a number of years past, if the board thinks the financial
211 condition of the company justifies it, to make him a donation or give him something for his trouble. The amount varies according to the year.

Q. What dividend does the company now pay?

A. Four per cent.

Q. How long has it been paying four per cent.?

A. I think two years.

Q. Do you remember what the stock was quoted at when you entered the board?

A. Six-eight. I paid as high as seventy for some of my stock.

Re-examined.

By Mr. BECKWITH:

Q. In speaking of the relative holders of water-works stock, do you

refer to holders other than the city of New Orleans or do you include the judgment?

A. Other than the city of New Orleans.

Q. What was the holding, as near as you can remember, of the city of New Orleans in 1884 or after the restoration of the stock in the Morris suit?

A. 3,927 shares.

Q. I refer to the period when the act was passed.

A. The city owned 3,927 shares.

Q. Do you remember how much the city or the board of liquidation of the city debt now holds?

A. That is all. They hold it now in place of the city
212 under a law passed. It is now in the name of the board of liquidation of the city debt.

Signature waived.

Exhibit filed by examiner May 31, 1887, and referred to in testimony on page 314 of this Transcript.

As directed in the course of my examination before the examiner on the 27th inst. in the case of New Orleans Water Works Co. *vs.* Southern Brewing Co., I give the following as the amount of city indebtedness retired or extinguished by exchange for water-works stock:

Bonded debt	$1,393,000 00
Floating debt	213,000 00

Please file this with my deposition.

(Signed) J. D. HOUSTON.

L. H. GARDNER, a witness produced, sworn, and examined for the complainant, says:

By Mr. BECKWITH:

Q. What connection, if any, did you have with The New
213 Orleans Water Works Company, complainant in this case, during the year 1884?

A. Superintendent.

Q. Were you superintendent during the whole of the year 1884?

A. I do not remember.

Q. Were you ever at any time secretary and treasurer of the company?

A. I was so made in July, 1882.

Q. Do you remember when you terminated that relation?

A. I cannot recall the exact date. My impression is it was in July, 1884.

Q. Have you examined the written Exhibit "J," as offered by the defendant herein, and can you state whether it is a copy of the advertisement published in the Daily States relative to legislation?

A. It is a *verbatim* copy.

Q. What connection, if any, did you have with its being published?

A. I took it to the office of the Daily States and had it inserted.

Q. By whose direction?

A. S. P. Blanc.

Q. Who is he?

A. He was the attorney who drew up the act.

Q. I am now speaking with reference to the notice.

A. I am speaking with reference to the notice. I happened on the day that I took it to the Daily States office to be in Mr.
214 Blanc's office, but whether he gave me this notice or whether I had previously received it from Mr. Houston I am not now able to say; but I received it from either one or the other and took it to the Daily States office.

Q. Do you remember who attached the designation or signature of the New Orleans Water Works Co. to that notice?

A. It was I signed it.

Q. By whose direction?

A. My recollection of it is that I asked Mr. Blanc whether it should be signed or not, and that he said it was probably better that it should be signed, and upon that suggestion I signed it.

Q. Was there ever any action of the board of directors of the water works Co. relative to the publication of that notice?

A. None whatever.

Q. Was there ever any act or resolution of the board of directors directing you to sign that notice?

A. None whatever.

Q. Was there ever any meeting of the stockholders relative either to that notice or to any legislation, or particularly to this act No. 56 of the acts of 1884 or any ordinance or contract with the city of New Orleans made under it?

A. None.

Q. Has there been any meeting of the stockholders of the company for any purpose other than the election of officers since you have been connected with the company?

215 A. None.

Q. Do you remember the circumstances connected with the payment of the bill of the Daily States for the publication of that notice?

A. Yes, sir; I do. The bill was brought in, and I instructed the payment of it. I made the payment and charged it up in the general expenses of the company.

Q. By whose direction?

A. My own volition.

Q. Was the matter of whether you should pay that bill or not submitted to the board of directors prior to the payment of the bill?

A. It was not.

Q. Do you remember any conversation or discussion relative to that afterwards with any of the directors of the company?

A. I do not.

Q. Do you remember any conversation or discussion relative to that item of disbursements with Mr. Houston?

A. I do not. I do not remember having spoken to him about it. I heard his testimony on the matter, but I do not remember the conversation he relates.

Q. Now, will you state in what manner and when and by whom the accounts of disbursements and earnings are presented to the board of directors or who presented them at that time?

A. At each meeting of the board of directors a trial balance is submitted to them.

216 Q. By whom?

A. By the secretary and treasurer.

Q. Do you remember at what time or can you state at what time the trial balance would be presented after the payment of this bill?

A. The first Wednesday in the month succeeding the payment. The meetings of the board of directors are held the first Wednesday of each month.

Q. Do you remember when that bill was paid?

A. I do not remember the date.

Q. Now, in that trial balance presented to the board of directors would this item appear distinctively?

A. No, sir.

Q. It would or does appear in which balance?

A. The general expense account.

Q. In the totals or what?

A. In the totals or footings.

Q. But not in detail?

A. No, sir; not in detail.

Q. What action, if any, is taken by the board on that presented trial balance?

A. None, except a casual survey of it by the members of directors who are present, and it is handed from one to another, and they ask such questions as may occur to them; it is merely a cursory view.

Q. Do you remember whether this item of disbursement
217 was ever as an item considered or dealt with distinctively or separately by the board of directors?

A. It never was.

Q. Can you state what the character of distribution of water, so far as the mains are concerned, is the character or distribution in that part of the city, in the vicinity of defendant brewery?

A. There is an eight-inch pipe in front of the brewery, if that answers the question.

Q. Eight inches internal diameter?

A. Eight inches internal diameter.

Q. Are there an- reinforcing pipes in the vicinity?

A. Yes, sir; there is a connection by eight-inch pipes in the streets immediately in that vicinity—eight-inch pipes running up parallel with the streets to Canal street, where they are reinforced by a sixteen-inch main on Canal street.

Q. Do you remember anything of the application of the defend-

ant company to the water works Co. for the water supply that preceded the time when they laid down their pipe to the river?

Q. The Southern Brewing Company now occupies the property formerly occupied by the Merz brewery. I find on reference to the books that in 1881 the Merz brewery caused to be inserted three ¾-inch service pipes and two ½-inch service pipes. In February, 1883, the Southern Brewing Co. applied for additional service
218 and thought that an additional ¾-inch service pipe would answer their purpose; that ¾-inch service pipe was so added. In February, 1884, a further demand was made and a two-inch ferrule or service pipe was put in. Since then I have had no further complaint.

Q. Do you know whether or not the Southern brewery took the service pipes of the Merz brewery?

A. I infer they did, because it was their only means of water supply.

Q. Do you remember how the estimate of the supply that the Southern brewery required was reached, with reference to fixing the rate of the charge for water?

A. At that time we had in our employment Mr. William Golding, who was charged with the duty of estimating the probable needs of large consumers, and upon his estimate they were assessed.

Q. Now, in the case of applications for water connection, who determines the size of the service for delivery—the applicant or the water works Co.?

A. The consumer does. The consumer makes the application and the water works Co. prefers that the consumer should have a full and ample service pipe rather than a limited one in order to avoid complaints from any cause. In other words, the water works Co. makes no objection to a large service pipe, particularly among large consumers.

Q. How is the supply estimated—upon the consumption of the business, or upon the probable delivery of a certain size of service pipe?

219 A. The consumption of the business.

Q. Do you remember any complaint being made by the Southern Brewing Co. of want of sufficient service that was not responded to on the part of the water works Co. with additional service?

A. I do not. I have just said that in February, 1883, they thought they needed an additional service pipe and they prescribed the size themselves. It was a ¾-inch; and in February, 1884, another demand was made, and I remember insisting upon them that they should make it large enough this time—that they should take a two-inch pipe, which they did.

Q. How long have you been connected with the distribution of water under this New Orleans water works system and the amount of water delivered or deliverable through the various sizes of *surface*?

A. I have been connected with the New Orleans Water Works Co. since July, 1882, and I have no knowledge of the extent and

character, such as a hydrolic engineer would possess, but when I have to compute a matter of that sort I resort to the text books and tables to aid me.

Q. Can you state what the average pressure at the water works pump is—the pressure on the mains that the water works Co. maintain?

A. From six o'clock in the morning until six o'clock in the evening a pressure due 60 feet head. From six o'clock in the
220 evening until six o'clock in the morning a pressure due to 28 or 30 feet head.

Q. What on Sunday?

A. A pressure due from 28 to 30 feet head.

Q. What is the capacity or pump of the water works Co. in relation to the supply or consumption in the city of New Orleans?

A. Seven for one. It will pump seven times the quantity that we are now supplying.

Q. In your opinion, at an average day and night pressure on the mains, how much water, by ordinary flow, incident to the pressure, would the service pipes that are open at the Southern brewery deliver in the 24 hours?

A. I would not like to say that I could answer that correctly, but at a rough guess I should say from 30,000 to 35,000 gallons of water an hour, day and night, and more than this if their pumps are attached.

Q. Has there ever been any rule, regulation, or objection on the part of the water works Co. to water consumers attaching pumps directly to their service so as to make a direct connection with their mains?

A. None whatever.

Q. To what extent is such connection made for mechanical purposes throughout the city?

A. The large consumers must necessarily connect their pumps with the mains of the water works Co.

Q. Do you know, or have you ever heard, of any objection on the part of the water works Co. to such connection?

A. None.

221 Q. Can you state whether you have any doubt in your mind that with the connections the Southern brewery had with the water works in the way of service pipes prior to the time when they laid their pipe to the river, and with no pump connected directly with the mains, the capacity of the service pipe was equal to the delivery of more than 100,000 gallons of water a day by the flow?

A. Yes, sir; I have no hesitation in saying it was equal to that. A two-inch single pipe would give them more than that.

Q. Could they have or would they have been allowed a larger connection than they did have if they had asked for it?

A. They were conceded all that they ever asked for, and in proof of this we have conceded to them a connection now in existence of a four-inch pipe from our mains in lieu of the old connections.

Q. Is this eight-inch main of which you speak as running in the

vicinity of defendant's brewery, with which the service connection is made, so connected with the diffusion or distribution of water as to be fairly fed or filled in case of drought?

A. It is.

Q. Were you present during the examination of Mr. Blaise and the engineer of the brewery?

A. I was.

Q. Do you remember the size of the pump that they stated as being connected with their own service pipe to the river?

222 A. I do not. I know that they have an eight-inch pipe.

Q. How much water, in your opinion, judging from your experience in the delivery of water through your mains, can be taken by flowage in the four-inch present connection with the brewery per hour?

A. At least 40,000 gallons of water per hour.

Q. Do you remember what the estimate of the supply required by the brewery, in its present relation to the company, per day, was?

A. No, sir; I do not remember.

Q. Has any statement been made by the president or officers of the brewery as to the amount of daily consumption they contemplated at present or in the immediate future with this present four-inch connection?

A. I have heard it, but I would not testify it. I know he said about doubling the capacity of it. I know this pipe is largely in excess of what his present or future needs may be. I don't know beyond that.

Cross-examined.

By Mr. GOLDTHWAITE:

Q. Have you any experience or education as an engineer?

A. None whatever.

Q. Your position at the water works has simply been that of secretary, treasurer, and superintendent?

A. Yes, sir; and my experience has been of a practical

223 kind, such as I have gained from books and study, but no mechanical education at all.

Q. Then the testimony you have given here with reference to the capacity of the pipes and the flowage of water and the service of water generally is derived from what?

A. Derived partly from experience, party from text books. The estimate that I have given, for instance, of the flowage of the four-inch pipe is somewhat less than I get from the formula laid down in the books of such estimates.

Q. Can you state what particular text books?

A. Haswell's Tables.

Q. Have you ever been down to the Southern brewery establishment to see what service of water was there?

A. Yes, sir.

Q. What is it?

A. Not with a view to determine it, but my own estimate in a casual way.

Q. How was it—free or feeble, or what was its character?

A. When I visited them they had an abundant supply.

Q. Was that when they drew the water from the water works Co. or when they drew it from their own pipe?

A. I am speaking now of the time when the water works company supplied them.

Q. What would be the effect of a large fire breaking out or occurring in the vicinity of the brewery with reference to the sup-
224 ply that the Southern brewery could drew from the mains in the vicinity?

A. It would decrease the pressure and volume of the flow unless the pumps were attached to the mains.

Q. You mean the pump of the brewery attached to the supply pipe?

A. Yes, sir; in other words, if there was a large draught in the immediate vicinity the flow would not be—you could not stop the flow nor would you materially decrease it, but it would have the effect of decreasing it to a certain extent. I speak of the natural flowage through a hose, and not if the supply were obtained by means of a pump intelligently applied at the brewery, as is common in all such establishments.

Q. What would be the effect of opening the fire-wells in the vicinity of the brewery?

A. Similar to that which I have just explained.

Q. Now, with reference to the flushing or cleaning of the pipes—what is the effect in any establishment like the brewery when you clean the pipes?

A. Similar to that which I have just described, but so trifling that I have yet to hear of the very first complaint from a large user or arising from any of the causes that you have spoken of since July, 1882.

Q. Is it or not a fact that the brewing Co. was always notified before the pipes were flushed?

A. Well, that is the general rule. I am not able to say. That is entrusted to the inspectors themselves who are flowing off.

225 Q. Why do they give that notice?

A. In order to guard against accidents, but particularly to notify families and those who are using ranges and have no means of providing themselves. It is in order to be entirely on the safe side, turning out the water backs in ranges. It is done out of abundance of caution.

Q. Is not the effect of that to precipitate a large amount of muddy water or mud upon persons who use the water?

A. Well, when we do it the general flushing of our mains stirs up all the mud in the mains, and for an hour or two or a few hours it does a little inconvenience.

Q. How often do you flush?

A. We open our hydrants for examination—it is not called flushing—to oil the screws and see that they are in thorough order once

in each month. We flush the whole distribution once in a year. Then we endeavor to take out once in a year the deposit of the year. The monthly opening is only just the opening of the hydrants to see about the screws. It takes about two minutes to each of the hydrants.

Q. What is the character of the water that you supply through your pipes? Is it water that you bring directly from the river or filtered water?

A. It is brought direct from the river to the consumer.

Q. Is there any arrangement of the water works Co. for clarifying or purifying the water?

A. Not at present. We have several schemes under consid-
226 eration, however, none of which have been decided upon yet.

Q. If a consumer wants clear water he has to clarify it?

A. Yes, sir; as it stands now and has stood for the last forty years.

Q. Is it the fact that there is a large deposit of mud or sand in the Mississippi river water?

A. Yes, sir; there is a large amount of silt carried in suspension.

Q. Do you know it to be a fact that in a large establishment like the brewing Co. that the water has to be filtered or condensed or in some way purified before it is used for a large number of purposes?

A. Well, that is a pretty broad question. For what purposes—for steam?

Q. For steam and a large number of purposes.

A. For steam, no, sir; the water used by the New Orleans Water Works Co. for steam is not purified; it goes direct into the boilers.

Q. What is the effect upon the boilers?

A. None that I know of, of a deleterious character. We wash the boilers and flush them out.

Q. Do you not flush them out oftener than you might if you had clear water?

A. Yes, sir.

Q. Do you lose as long a time as if you used water in its pure and natural state?

A. I have no knowledge on that subject.

227 Q. How is it with reference to the washing of bottles?

A. Well, as I never was in that business I cannot tell you.

Q. Your position, I believe, in the water works Co. in 1884 was that of secretary and treasurer—to have general charge in the office of its affairs?

A. Yes, sir; under the direction of the president.

Q. Would the president remain at the office or merely to come to the office to attend to certain business?

A. He was absent from the office; he did not make his headquarters there at all.

Q. How long would be the time?

A. Probably fifteen minutes in a week.

Q. Then in his absence you had charge?

A. Yes, sir.

Q. Your duties embraced the paying of bills and looking after the books of the company?

A. Yes, sir.

Q. Were you present at the meeting of the board of directors?

A. Always.

Q. What position did you occupy at the meetings of the board of directors?

A. None whatever except that of an employee.

Q. How often did the board of directors meet?

A. Once a month.

Q. Now, with reference to the payment of this bill for advertising the notice which you gave in the Daily States of an act
228 to be introduced into the Legislature at the session of 1884. Did that come to you in the ordinary course of business?

A. In the ordinary course of business.

Q. Do you know whether the president had a knowledge of the advertisement of that act?

A. He may have seen it in the paper. I did not call his attention to it.

Q. Had it been discussed at all at any meeting of the board of directors or by the president before it was brought to you?

A. It had not.

Q. How came you as secretary and in charge of the office of the water works Co. to receive an act of that kind or instructions of that kind from Mr. Blanc?

A. Well, there was a great deal to be taken for granted.

Q. Had you had any business relations with Mr. Blanc before that?

A. I knew him as the attorney who had, directly or indirectly, charge of important litigation. I knew him as Mr. Houston's friend and lawyer.

Q. And in charge of the litigation of the water works Co.?

A. Yes, sir; he had been.

Q. How long prior to that time?

A. I cannot say from memory. He had some connection with the litigation of the company, but what it was I don't know.

Q. You knew as a fact that that case had been decided over a month previous to May in the supreme court of the State
229 of Louisiana?

A. No, sir; that is not fresh in my memory; the question of dates is not.

Q. Had you seen Mr. Blanc anywhere about the office of the water works Co. previous to that?

A. Not to my recollection.

Q. Had you any reason to believe that he was the attorney of the company at that time, having charge of some business for the company?

A. No, sir; I knew that he was not, unless specially employed.

Q. Then how came you to receive this notice so put in the newspapers?

A. My answer again is I took it for granted. I knew he had the

drawing of this act in charge because he told me so in his office; that he was drawing it for Mr. Houston.

Q. He was with you before he came to your office?

A. He did not come to my office; it was in his own office. Whether I received this notice from Mr. Houston or whether Mr. Blanc gave it to me I am not now able to distinctly say. My impression is that Mr. Blanc handed it to me and said it should be inserted in the paper.

Q. Did you know that Mr. Baldwin, the president of the New Orleans Water Works Co., was in the city and had charge of the affairs of the company at the time that you had this notice put in the newspaper?

A. I do not now remember.

Q. Do you know whether Mr. Houston, acting vice-presi-
230 dent, was in charge at that time?

A. He was not in the city. I remember that distinctly.

Q. Did you take the notice around to the Daily States office yourself?

A. My recollection is that I took it around myself. I either took it personally or sent it.

Q. Did you take it in the original as drawn by Mr. Blanc or did you have a copy made?

A. My recollection is that I took it as it was given to me or as I received it.

Q. I believe you have testified that you did not call the attention of the president or any of the board of directors to the fact of this publication.

A. I did not. If they knew of it at all they knew it simply from seeing it in the newspaper.

Q. You don't know whether they had any other knowledge?

A. Not from me.

Q. Well, from anybody else while you were present?

A. No, sir.

Q. Did you not know that that act was under discussion or consideration by the water works Co. before the application was made to the Legislature?

A. I have attended every meeting of the board of directors of the New Orleans Water Works Co. since July, 1882, and I am able to state positively that in no way, shape, or form was it discussed.

231 Q. Either at a meeting of the board or by the members of the board outside?

A. No, sir; if there was any such discussion I know nothing of it.

Q. Do you know anything with reference to the ordinance that was passed by the city council to carry that act into effect?

A. I only know that such an ordinance was passed. I know that the contract was entered into confirming the ordinance and under the ordinance.

Q. How did you gain that information?

A. From the fact that it was in the daily prints. I was con-

nected with the water works Co., and when the contract was entered into I saw it.

Q. I am speaking of the ordinance before the contract was made.

A. Well, you will have to give me your question again.

Q. How did you get your information, if you had any information, with reference to the ordinance of the city accepting the act of 1884?

A. Well, I was aware, in the ordinary course of business, that such a measure was before the council.

Q. By the course of business you mean the business of the water works Co.?

A. Yes, sir; the business of the water works Co. I cannot tell how I gleaned the first information.

Q. Was that a matter for the consideration of the water works Co.?

232 A. Not by the board of directors necessarily.

Q. But persons not on the board of directors?

A. I don't know that I heard much about it from that source.

Q. Then you did not know much about it until you saw it in the prints?

A. Well, yes, sir; I certainly knew that the matter was pending; I certainly knew that.

Q. Can you tell us where you got your information from?

A. Well, one gets information in a general way or a specific way. I may have got it from Mr. Blanc or Mr. Houston or from a member of the council. I may have got it from Mr. Blanc, as he was drawing up the ordinance. I know he drew up the ordinance, because I think he stated so to me.

Q. How did you come to a knowledge of that contract which was made under that ordinance?

A. Well, officially, as that was a matter that was settled upon by the board The board passed a resolution authorizing the president of the company to enter into a contract with the city under that ordinance.

Q. Was that the first time that you heard of the contract?

A. That is the first I heard of the contract being made.

Q. But you heard of the ordinance before that?

A. Yes, sir.

Q. Now, you testified that no complaint was made to you by the Southern Brewing Co. at any time?

A. No, sir; I say that they complained that their service

233 pipes were not large enough.

Q. But I mean with reference to the service itself. You heard of no complaints except what was allowed them in the additional service pipes?

A. None whatever.

Q. Is that simply your recollection, or are you positive?

A. I can say I am positive, because it was a matter of pride to me and the board through me to see that our patrons were supplied with water. I should certainly take very active steps to see that such a complaint as that was attended to.

Q. You say it is customary for the company to supply all the water that is asked in the way of service pipes?

A. Yes, sir.

Q. And that you let them regulate the supply of water that they want? The company does not undertake to fix it?

A. That is true. I will say just here that the Southern Brewing Co. and its officers were not unlike the majority of consumers in New Orleans, in this, that they feared to ask for too large a service pipe for fear that they would be overestimated in the quantity of water supplied and the bills made out in accordance with the size of the service pipes and for a greater — that they would use. This leads many consumers to ask for a small- service pipe than the demands really require.

Q. How was your computation and charge made up? Was it with reference to the pipe or what?

234 A. No, sir; it is based on their actual consumption.

Q. That was got by information furnished by the consumer?

A. No, sir; Mr. Golding, to whom I have alluded, and these persons of the Southern Brewing Co.

Q. Mr. Golding, you say, was the man that directed all that up to that time?

A. No, sir. He directed nothing. He was employed by the company to estimate the quantity of water used by large consumers, and upon his estimate the assessment was made of the price or value.

Q. With reference to the supply of water at nights and on Sundays, you say it has a pressure of from 28 to 30 feet head?

A. Yes, sir; a pressure due to 28 or 30 feet.

Q. Was your attention never called to the feeble supply of the water which was received by the Southern brewery at night and on Sunday?

A. Not to my recollection, otherwise than has already been stated.

Q. To what is it due—the diminution on Sundays and at night of the supply of water or pressure?

A. Well, the system of the New Orleans Water Works Co. is intermittent. We pump direct with our machinery a pressure of 60 feet in the day-time, but the night supply to the city is from gravity pressure supplied from the reservoir. We supply the city then from the reservoir by gravity pressure, and not by pumping.

235 Q. What is the capacity of the reservoir?

A. Nominally from 4,000,000 to 5,000,000, but I don't think we ever put into them over 850,000 gallons each.

Q. How many of them?

A. Four of them.

Q. Is the water supplied to the city from all four at once or from one at a time?

A. From all at once, unless when we are repairing one of the basins.

Q. Have you been repairing them since you have been in the company?

A. Yes, sir; repaired them and cleaned them out; but that has nothing to do with the quantity of water in them. It only involves a little more pumping when we are not using the whole of them; but the repairing or cleaning of the reservoirs has nothing to do either with the pressure or the quantity supplied.

Re-examined.

By Mr. BECKWITH:

Q. Where does the New Orleans Water Works Co. take its water on the river front for pipe water supply?

A. From the Mississippi river.

Q. Whereabouts on the river front?

A. At the foot of Richard street.

Q. About how far is that above Canal street?

236 A. I am not able to say.

Q. How is it located with reference to the city front along the Mississippi river—up stream or down stream?

A. It is up stream.

Q. In which direction does the water flow from the point where the New Orleans Water Works Co. takes its water to the point where this pipe in controversy, from the Southern brewery to the river, meets the river?

A. Down stream, and in a northeasterly direction.

Q. Do you know of any increased purity or decreased amount of sediment that the water gets in flowing from the point where the water works takes the water to the point where the water was taken in this main in controversy in this case laid down by the Southern Brewing Co.?

A. Our source of supply, I should say, is infinitely purer than the source of supply of the Southern Brewing Co.

Q. For what reason?

A. There is no deposit of fœcal matter above us, very little shipping, and very few influences to make the water impure. The Southern Brewing Company takes its supply from the foot of Toulouse street, which is just below the discharge of the fœcal matter from the Charity Hospital, the United States custom-house, the St. Charles Hotel, the City Hotel, the Maginnis oil mills and soap factory, and Hernsheim's tobacco factory. That, together with the steamboats and other shipping, I should say, would make that place or

237 that point of supply infinitely less pure than where the New Orleans Water Works Co. take their supply.

Q. Do you know any reason why there should be less silt or sediment where the main reaches the river at the foot of Toulouse street and the place where the induction pipe of the water works Co. reaches the river?

A. I do not.

By Mr. GOLDTHWAITE:

Q. You say that the pipe from which the Southern Brewing Co. draws its supply of water—the pipe in controversy in this suit—is

just below where the Charity Hospital, the St. Charles Hotel, and Maginnis and other factories discharge their fœcal matter—about how many blocks or squares below?

A. About four from the custom-house.

Q. Do you know how far the pipe of the Southern Brewing Co. projected into the water?

A. I do not.

Q. Do you know what the effect of water on fecal matter is?

A. Well, I do not.

Q. Do you know as a fact that there is any greater impurity in the water drawn by the Southern Brewing Co. than in the water drawn by the water works Co.?

A. As a matter of positive certainty I should say so.

Q. Then it is a matter of inference?

A. Yes, sir; it is a matter of inference.

Q. Do you know anything as to the wholesomeness or pur-
238 ity of the water at all?

A. Well, I would not answer as an expert.

Q. Have you any education or anything to inform you in order to make a correct opinion as to pure and wholesome water?

A. Well, I can only say that after the emptying of that lot of fecal matter, as an intelligent man, that it would not be nice water to drink—certainly not as nice water as water that had not these elements.

Q. Did you ever drink the Mississippi river water in its natural state?

A. Yes, sir; I did.

Q. Did you like it?

A. Yes, sir; I did, very much.

Q. Do you drink it often?

A. Every day.

Q. In its natural state?

A. No, sir; I clarified it.

Q. But in its natural state, as you draw it from the river?

A. No, sir.

Q. You do not know the difference between the water above Custom-house street and the water below Custom-house street?

A. Well, only by inference.

Q. You have no knowledge of it?

A. No, sir.

Q. You never tasted it in any way?

A. No, sir.

239 By Mr. BECKWITH:

Q. Did you ever hear of a mixture of fecal matter being considered as an advantage or increasing the potable quality of water?

A. No, sir; none of the works that I have ever read on the subject of water stated there was any additional charm given to water by such a mixture.

Signature waived.

Adjourned to Friday, June 3, 1887, at 12 o'clock m.

NEW ORLEANS, *June* 4, 1887.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE SOUTHERN BREWING COMPANY.

Testimony resumed on behalf of the complainants this day, both solicitors present.

JOHN PONDER, a witness produced, sworn, and examined for complainant, says:

By Mr. BECKWITH:

Q. Where are you employed and how long have you been so employed?

240 A. I am employed in the Charity Hospital as engineer, and have been there seventeen years.

Q. Do you have anything to do with the supply of water to the Charity Hospital?

A. Yes, sir; I believe I have all the dealings with the water-works pipes there.

Q. Do you know with what size mains you are connected?

A. Yes, sir; four-inch.

Q. Do you mean the service or the street main?

A. I mean the service.

Q. Do you know what size street main you connect with?

A. Well, we have two.

Q. I now refer to the main that the pump is connected with.

A. That is four-inch.

Q. A four-inch street main?

A. Yes, sir.

Q. What pump connection is there with that main and for what purpose?

A. We have our main tank-pump connected with that pump supplying the hospital.

Q. For what parts of the hospital is that a supply?

A. We supply the entire institution with the exception of the ground floor; all the hot and cold water throughout the entire building; hot and cold water baths, urinals, scrubbing purposes, etc., and the filter comes in from the same.

Q. Where are the reservoir tanks in the hospital located?

241 A. They are on the top of the main building.

Q. Do you know about how high from the ground?

A. About sixty-two (62) feet—61 or 62, I don't remember which at this moment.

Q. How is the delivery pipe from the pump run to the tanks, and what size is it?

A. The discharge of the pump?

Q. Yes.

A. It is two and a half ($2\frac{1}{2}$) inch.

Q. Does the pipe continue that size up?

A. No, sir; we have a four-inch pipe; about eight feet of it two

and a half; and then it discharges into four—four all the way up to the tank. We first pump through about 250 feet of horizontal pipe and from that we come into about 62 feet of a rise, perpendicularly.

Q. Do you know about what the water supply of the Charity Hospital is per day?

A. Not including the ground floor?

Q. Not including the ground floor.

A. Well, it is about—I know it is about 65,000 or 68,000 gallons, between 65,000 and 68,000 gallons.

Q. Now, have you a pump so connected that by opening the valve in the suction and delivery pipe the water can run through it?

A. With the very force it has it runs up into the tanks.

Q. In doing that, does it have to lift the valves?

242 A. Yes, sir; it has to resist the valves on the pump to get up.

Q. Have you ever filled the tanks by letting the water run through the pipe and without applying power to the pump?

A. Yes, sir; we done it hundreds of times.

Q. Can you state whether or not you keep pressure gauges on your main and on your tanks?

A. Yes, sir; we have pressure gauges connected with the New Orleans Water Works Co., and also our tanks.

Q. About what is the pressure back on the gauge of your tank when full?

A. Well, on our tank it is about 33 pounds.

Q. You mean 33 pounds on the gauge?

A. Yes, sir; 33 to 34 pounds.

Q. Will you state whether your pump is connected directly with the main or whether you take the water from the reservoir into which the water forces and from which you take it by the pump?

A. No, sir; we take it directly from the main—that is, the service coming in from the street.

Q. What is the size of your pump, do you remember—the interior of the bore of the pump—the water end?

A. Yes, sir; our pump is 5½ by 10.

Q. How much water can you draw from that main with your pump in a day?

A. In a day?

Q. Yes; take the twelve hours.

243 A. Well, we run the pump now about an hour and a half in the morning and about the same in the afternoon, and then at eleven o'clock we start again and we pump about one hour to get about 67,000 gallons.

Q. You have said something about a filterer?

A. That is connected on that pipe.

Q. Does the water go through the filterer up to the tanks?

A. No, sir; we have tanks connected for that purpose. We have two 20,000-gallon receptacles mounted on brick-work twenty feet from the ground, and we fill them simply by the water-works pressure.

We do not have to pump them full, but the water comes through the same service.

Q. How often have these pumps to be worked?

A. We work them slowly all day, with the exception of the time that the pump is working. During that time we do not get a supply. It interferes so much with the filtering that we have to shut them down.

Q. In addition to the water that runs into the tank you run the filterers?

A. Yes, sir.

Q. How many gallons in the day is your consumption of filtered water?

A. I don't think it is more than 12,000 or 15,000 gallons.

Q. Now, you have a sewage pipe also from the hospital?

A. Yes, sir. That does not get water from that main.

Q. Where do you get the water for that main?

244 A. It comes from another main that comes in from Common street.

Q. About how much water is used to flush that?

A. To flush the vault?

Q. Yes.

A. We use that to lighten up our fluid when it is very heavy, the main being so long between the hospital; we have about a mile and a quarter of pipe in the direction it runs.

Q. Through what streets does your cess-pool pipe run?

A. From the corner of Gravier and Howard down town as far as Custom-house street, and from Custom-house street to the river.

Q. Where does it out at the river?

A. At the foot of Custom-house street.

Q. Do you remember whether it connects with the custom-house pipe?

A. No, sir; it does not connect. It runs independent all the way through.

Q. What takes the matter from the cess-pool vaults? It is forced through that to the river?

A. Yes, sir.

Q. Now, it requires water at times, does it not, to get off the fœtal matter—fluid enough to go through the pipe?

A. Yes, sir; we very often do that; sometimes we fill the vault up entirely.

Q. Can you estimate about the average amount of water that you run in there?

245 A. The vault has a capacity of 34,000 gallons. I have filled that vault in two hours and five minutes—that is, the force had to go through the valves to get into the vaults two hours and five minutes. That is about the time it takes to fill the vault. Now, that pipe is four-inch; it enters from Common street, and belongs to the hospital.

Q. What is the size of the pipe?

A. Four-inch.

Q. Have you any force-pump connected with it?

A. Yes, sir.

Q. Can you give us the size of the force-pump connected with the cess-pool main?

A. Yes, sir; I can give you the size of that.

Q. Give us the size of the water end of that.

A. The water end is twelve inches bore and about sixteen — length.

Q. About how many strokes a minute do you run your pump when you are forcing the fœtal matter to the river?

A. When we are forcing *fœtal* matter to the river we run them about sixty revolutions—55 to 60 revolutions.

Q. That would give 55 or 60 double strokes of the pump?

A. Yes, sir.

Q. About how long during the course of the day does it take you to force the *fœtal* matter through that pipe?

A. We run it about half an hour in the morning and probably thirty-five minutes in the afternoon.

Q. Have you any doubt that through that four-inch main connection with which your tank pump is connected you could

246 draw 100,000 gallons of water a day?

A. Through the four-inch pipe?

Q. Yes.

A. There could be no doubt in the world about that; no doubt, with the pressure they are carrying at present.

Q. I mean operating your pump.

A. Yes, sir; there would be no trouble about that.

Q. Have you ever timed it to see how long it took your storage tanks in the upper story of the hospital to fill by running through the pump?

A. No, sir; I know exactly how long it takes to fill them, but I don't know how much water it would take to fill them; but I should say it would take about an hour and a half to fill them three-quarters full, they being one-quarter full when we start. They hold 28,000 gallons of water.

Q. Do you know where the Southern brewery is located—the old Merz brewery?

A. Yes, sir; I know where Merz' old brewery is, now the Southern brewery.

Q. Can you state whether the Charity Hospital is nearer the river front than the Southern brewery or which is the nearest—the Southern brewery or the Charity Hospital?

A. Well, I think they are about on a line; I think the brewery is on Villere street. I do not see but that both are about the same distance from the river.

247 Cross-examined.

By Mr. GOLDTHWAITE:

Q. Why do you have your pump attached to the service main?

A. Because in case of fire we would not be able to get water from the tanks, but that is not the principal reason. The principal reason

is that formerly we did not have the pressure that we now have, and we at one time here had no trouble in the world in digging up the pipe, standing on a scaffold and making a joint on it. Of course, since that time we have a great deal more water than we had heretofore; but we save a great deal of fuel by not pumping; consequently we use the pressure of the water works very often.

Q. Is it is not a pump necessary at the Charity Hospital?

A. Yes, sir; it is necessary.

Q. Could you get along without it?

A. Yes, sir; we could possibly get along without it, but we would scant ourselves with water. We would have to carry it upstairs sometimes. We would have to be sparing with it, because we could not always get water enough up that height.

Q. Why could you not get enough water?

A. Because this pressure would not hold out.

Q. The pressure where would not hold out?

A. The pressure on the water-works main.

Q. What is the character of the water that you get?

A. You mean its percentage of mud?

Q. Yes.

A. Well, probably it contains 1½ per cent.

248 Q. For what purpose do you use it in the natural state in which you get it?

A. For what purpose?

Q. Yes, sir.

A. We use it for bathing in the main building and for water-closet and urinal purposes, etc.

Q. Do you use it for drinking purposes in its natural state?

A. No, sir.

Q. What do you do with it before you use it for drinking purposes?

A. Filter it.

Q. Could you use it for drinking and cooking purposes without filtering it?

A. Yes, sir; we have done it.

Q. To any large extent?

A. Well, we did it before we had these filterers. We could never get cistern capacity to do it.

Q. Did you ever resort to other means to clarify it?

A. No, sir.

Q. What is the maximum use of that water at the Charity Hospital?

A. Not including the ground floor, 67,000 gallons.

Q. Well, including the ground floor.

A. Well, I would have to guess at that, because we have about forty hydrants on the ground floor.

Q. Well, approximate.

A. Well, I suppose we use in the Charity Hospital about from 85,000 to 95,000 gallons of water a day.

249 Q. Have you any knowledge as to whether the flow of water is affected by a fire breaking out?

A. Yes, sir; a fire at times does diminish the pressure for a little while in the starting off. It depends upon the locality of the fire to a very great extent. If the fire is back of town, some of the small mains, it runs the pressure down sometimes as much as three to five pounds.

Q. What is the effect of that upon the flow of water that you get into the hospital?

A. Well, it would not go up into that 63 feet tank then.

Q. How do you get the water up into these tanks?

A. We pump it up.

Q. Could you depend upon a supply of water in these tanks without pumping?

A. Not up there.

Q. How much did it cost to put your pump in?

A. Including the price of fitting and all?

Q. Yes.

A. Well, our pump—I think that pump cost us $300, and the putting up of the pump is my own labor, as I am employed there.

Q. The pump requires an engineer, does it?

A. Well, it would not be absolutely necessary to have an engineer to run that pump.

Q. It would require an engine?

A. Yes, sir; it would require a steam-engine to run the pump. A man who has had some experience in steam and handling
250 pumps would be sufficient to take charge where there is nothing else but a pump, but we have other machinery regardless of that pump.

Q. Operating the pump requires an additional expense for fuel?

A. Yes, sir. There is no doubt about that.

Q. Could you estimate the quantity of fuel it takes to run that pump?

A. Well, our additional expense of running that pump would amount to very little. That is due to our having to send steam to a great many parts of the building; but I suppose that the pump would cost about a dollar a day to run.

Q. You mean for fuel?

A. Yes, sir; for fuel, not saying anything about its operation or its lubrication.

Q. Have you ever noticed any effect upon the supply of water or the flow of water in the Charity Hospital caused by flushing the pipes of the company?

A. You mean by throwing open the plugs, bringing down the pressure that way?

Q. Yes.

A. That will diminish the pressure where the mains are small. There may be three or four plugs around the locality, and if they open them it brings the pressure down. It does not last so long as at a fire—not over ten or fifteen minutes.

Q. What is the effect with regard to the water that you get if you do not open the plugs?

A. If you do not open the plugs?

251 Q. Yes.

A. You mean whether it adds to its mud qualities if you do not open it?

Q. I want to know if it adds more or less.

A. Well, when you open the plugs there is an agitation, of course, produced in the mains, and the water will run muddy for a little while—ten minutes, probably. Then it becomes quiet again, except our own circulation, caused by the agitation of our pump, which is produced—requires a pressure of seventy feet, which is very little. In other words, very shortly after the plugs are closed the water becomes quiet and deposits its mud in the mains.

Q. Do they notify you when they are opening them?

A. Yes, sir; they do.

Q. What do you do then?

A. We never pay any attention to them.

Q. You never pay any attention to them?

A. No, sir; not a bit.

Q. Have you any apparatus for condensing or cooking the water out there?

A. No, sir; outside of the evaporation in our boilers. We evaporate a quantity of it in our boilers, but it is when the mud is all taken from it. When we use it for drinking purposes it is when the mud is all taken away. Then it is deposited in the higher filterers.

Q. Then you use that water in the boilers?

A. Yes, sir; and for drinking purposes.

252 Q. What would be the effect upon your boilers if you did not filter the water?

A. Well, we think we would have to wash them out and get rid of this deposit.

Q. Do you know anything about the flow of water down at the old Merz brewery, or where the Southern brewery now is?

A. No, sir.

Q. Do you know anything with reference to the mains from which that brewery is supplied?

A. No, sir.

Q. Do you know anything about the flow of water down in that part of the city?

A. Well, as far as gravitation is concerned and under the pressure, it must be slightly lower than here; consequently there ought to be a little more pressure down there than at the Charity Hospital, because it drains that way from the hospital probably 16, 18, or 20 inches down there, so that there must be a little more pressure there.

Q. Do you know whether the Charity Hospital is supplied free of charge or whether it pays for its water?

A. I do not.

Q. Do you know anything about whether the discharge of the *fatal* matter into the river at Custom House street would effect the water in that particular locality?

A. In that particular locality? That covers a great deal of ground, in that particular locality.

Q. I mean by that if you draw water from the river near that pipe.

253 A. Well, you will have to give me a certain number of feet—10, 20, 30, or 40 feet—before I can demonstrate that; you can call the locality seventy feet above.

Q. Well, forty feet straight out.

A. I think it would affect it very little; the chances are not at all.

Q. Do you know anything about the supply of water that the Louisiana Sugar Refining Company gets?

A. No, sir; I have no idea.

Q. Do you know how their pipes are located?

A. No, sir.

Signature waived.

It is agreed between the counsel that the time for taking depositions and proofs in this case be extended until the last Monday in November.

254 *Act Establishing Commercial Bank of New Orleans. Offered with Complainant's Testimony. Approved April* 1, 1833.

AN ACT

To incorporate the Commercial Bank of New Orleans.

Whereas, sundry inhabitants of the City of New Orleans have petitioned this General Assembly, setting forth that they are desirous of establishing a Company in the City of New Orleans, invested with banking privileges, and to be entitled the "Commercial Bank of New Orleans:" the chief object of which said Company, is to be the conveying of water from the river into the City of New Orleans and its faubourgs, and into the houses of its inhabitants. *And whereas*, the said object will greatly contribute to the security of the said City from fire, and to the health and convenience of the inhabitants, and the agricultural and commercial interests of this State may be greatly promoted by extending to said Company the privileges required, *therefore*,

* * * * * * * *

SECT. 4. *Be it further enacted*, &c., That all such persons as shall become subscribers to said company, their successors and assigns, shall be and are hereby created and made a corporation and body politic, by the name and style of the *Commercial Bank of New Orleans*, and by that name shall be and are hereby made capable in law, to have, hold, purchase, to receive in payment of debts, possess, enjoy, and retain, to them and their successors, property and estate of what nature, kind, or quality soever, or so far as is necessary to carry into complete effect the object of this charter, which is declared to be the furnishing of the city with good and wholesome water; and the same to alien, transfer and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and

be defended, in any court or courts of record, or other place whatsoever; to have forever the exclusive privilege, from and after the passing of this act, of supplying the city and inhabitants of New Orleans and its faubourgs, with water from the river Mississippi, by means of pipes or conduits, and for erecting, constructing, or working of any necessary engine; and they may contract for, purchase or lease, the right to enter and pass through, from time to time, as occasion may require, any lands or grounds through which they may deem it necessary to convey the said water into said
255 city and its faubourgs; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the river from any place or places that they may deem fit, and to raise and construct such dykes, mounds, or reservoirs, as they may judge proper, for securing and conveying such supply of water, as aforesaid, to the said city and the faubourgs thereof; and to survey such lands as they may think proper, in order to ascertain the best mode of furnishing such supply, and to lay and place any number of conduits, pipes, and aqueducts, and to cleanse or repair the same, through or over any of the lands or streets of the city of New Orleans and its faubourgs; and also to have and use a common seal, and the same to break, alter and renew at pleasure; and also, through their president and directors, to ordain, establish, and put in execution, such bye-laws, ordinances, and regulations, as shall seem necessary and convenient for the government of said corporation, not being contrary to this act, nor to the constitution and laws of the United States, or of this State, or ordinances of the city council of New Orleans; and generally, to do and execute all such acts, matters and things, as to them shall or may appertain to do; subject, nevertheless, to the rules, regulations, restrictions, limitations and provisions hereinafter specified and declared. *Provided however*, that at any time after the expiration of thirty-five years from the passage of this act, it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans, the water works constructed by said company in virtue of this act—and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided.

* * * * * * * *

SECT. 11. *Be it further enacted, etc.*, That said company shall, within twelve months after the first election of directors, commence works, and commence to procure such materials, as may be necessary to enable them to furnish the inhabitants of the city of New Orleans and its faubourgs, with sufficient water from the river at all seasons of the year; and in order that the true intent and meaning of this act be strictly adhered to and complied with, and that the
256 waterworks, contemplated to be constructed by said company, be completed in the shortest time practicable, under all the circumstances, the sum of at least one hundred thousand dollars shall be expended, on the works aforesaid, annually, until the said company is in a situation to supply, and actually do supply, water to the greater part of the streets of the city proper, and the princi-

pal and most populous streets of the faubourgs—said expenditure to commence within one year after the passage of this act—so that the city of New Orleans and the faubourgs thereof, may be furnished with water in the streets, and such inhabitants may procure it by means of conduits or pipes, within their houses and lots, at a price to be regulated by the company: and should the said company fail or neglect either to commence or continue said works as aforesaid, then, and in such case, the charter now granted shall be wholly null and void; *provided, however*, that the net profits on the same shall not exceed an interest of fifteen per centum per annum, from the time of disbursements on said works; and at such times as dividends shall be declared by the bank, say semi-annually, the interest on the sum expended in constructing said waterworks shall be added thereto, and shall form a part of the capital invested, until the net revenue of said works amount to fifteen per centum as aforesaid; *and provided also*, that the City Council of New Orleans shall have the power annually to appoint a committee, who shall have access to such of the books of said bank as relate to the said Waterworks Company, and may make such extracts from the same as they may think necessary; *and provided further*, that at the end of five years after the first appropriation, the said net profits shall not exceed ten per cent.—and in case said profits should exceed fifteen per centum during the first five years, and ten per centum afterwards, as provided for in this section, the City Council shall have the power to reduce the price of water, in such a manner and in such a proportion, that the profits should never exceed the above mentioned rates.

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SECT. 21. *Be it further enacted, etc.*, That within the first thirty days that the books are opened for subscription, the corporation of the city of New Orleans may subscribe for five thousand shares of
257 the capital stock of said company, not subject to deduction; and for which the said company may receive the bonds of the mayor, aldermen and inhabitants of New Orleans, redeemable in forty years, bearing an interest not exceeding five per centum per annum, payable half yearly.

SECT. 22. *Be it further enacted, etc.*, That if, agreeable to the twenty-first section of this act, the corporation of the city of New Orleans shall subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, then, and in that case, the City Council of New Orleans shall annually elect, by ballot, from the mayor, recorder and aldermen of said Council two persons, who shall be members of the Board of Directors; and the stockholders shall only elect eleven instead of thirteen directors, as provided for in the third and sixth sections of this act, in which election the said City Council shall not vote as stockholders; *provided*, that nothing herein contained shall be so construed, as in any manner to impede, diminish or impair, the rights and powers granted to the City Council of New Orleans, and to the committee to be appointed by them annually, by virtue of the eleventh section of this act.

SECT. 23. *Be it further enacted, etc.*, That the provisions of the thir-

teenth section of this act relative to half yearly dividends, shall not be so construed, as to apply to the stock, subscribed for and owned by the corporation of the city of New Orleans; the dividends arising from the shares so owned, shall be applied, first, to the payment of the interest on the bonds given to the Commercial Bank of New Orleans for the stock subscribed by the said corporation, and the surplus shall be passed to the credit of the said corporation, half yearly, at such times as dividends are payable to other stockholders, to be set apart as a sinking fund, applicable alone to the payment of the bonds of said corporation, when they shall become due, and the said corporation shall be allowed an interest of five per centum per annum on the same, by the Commercial Bank of New Orleans.

SECT. 24. *Be it further enacted, etc.*, That if the corporation of the city of New Orleans shall fail to subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, within the first thirty days the books are opened for subscriptions,
258 the twenty-first, twenty-second and twenty-third sections of this act shall be considered null and void, and of no effect.

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SECT. 33. *Be it further enacted, &c.*, That in the city of New Orleans, its suburbs, and adjoining lands laid out in town-lots, the company shall have the power of using the streets and public places, for the purpose of placing pipes to run the water: *Provided*, they do not obstruct the said streets longer than will be absolutely necessary for the said purpose, or for making any repair; *and provided* they restore the said streets to the same condition they were before, in as short a time as possible; that within the said limits, it shall not have power to place any pipe, or do any work upon any lot of ground, without the consent of the owner; and that out of the said city, its suburbs, and the lands laid out in town-lots, if the said company shall not be able to agree with the proprietor or proprietors of lots of ground through which it may be necessary to run the water, through pipes or otherwise, as the directors may deem expedient, for the purpose of introducing water into the said city and its faubourgs; or if such owner or owners shall be absent out of the State, or unknown, or shall, from incapacity, legal or otherwise, be precluded from making any contract or agreement in relation thereto, it shall and may be lawful, on the application of the president and directors of the Commercial Bank of New Orleans, for the judge of that judicial district of Louisiana wherein the city of New Orleans is, or may be hereafter, situated, to issue his warrants to the sheriff of the parish of Orleans, commanding.

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SECT. 36. *Be it further enacted, &c.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its faubourgs, or shall change, alter, remove, injure or destroy, any work or part of a work made by the said company, or caused to be made, for the purpose of introducing water into the city of New Orleans and its faubourgs, under the authority of this act; or if any person shall alter, obstruct, change or pol-ute, by any tan-yard, hog-stye,

slaughter-house, dye-pot, or otherwise, the water or streams
259 which the said company shall hereafter introduce, or shall be preparing to introduce into the city of New Orleans and its faubourgs, under the authority given and regulations prescribed by this act, such person or persons shall be indicted in the proper court for the trial of offences within the parish of New Orleans committed, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offence, and imprisoned for any time not exceeding seven years; such fine to be paid and applied to the use of said company.

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SECT. 38. *Be it further enacted, &c.*, That the corporation of New Orleans shall be supplied by the said company, free of charge, with all water necessary for the extinguishment of fires and other public purposes; nor shall the city council be subjected to any charge for water furnished to supply the gutters of the said city and faubourgs; and that the said company, as they progress in laying acqueducts, shall place, free of any charge whatever, two hydrants of a proper construction, in front of each square, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn, for extinguishing fires, for wetting, washing and watering the streets and gutters, and any other public purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners; that the said hydrants shall be of a proper size and made so as at all times to furnish water for the fire engines, and purposes herein mentioned: it shall further be the duty of said company, to supply water for all the purposes herein mentioned, at all times, during the continuance of this charter, unless prevented by some unavoidable accident; and in case such shall occur, the repairs shall be made and the water again furnished at the expiration of the necessary delay; and the said company shall supply a sufficient quantity of clear, pure and wholesome water for the use of the inhabitants, within the limits aforesaid, at the elevation of fifteen feet, when the same may be required. *Provided however*, that said hydrants shall be under the control of the Commercial Bank.

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SECT. 41. *Be it further enacted, &c.*, That the second section
260 of this act shall not be so construed as to apply to the payment of ten dollars per share *at the time of subscribing*, on the stock subscribed for by the City Council of New Orleans. But said corporation shall, within thirty days from the organization of the first board of directors of the Commercial Bank of New Orleans, execute in the form required by the directors, the bonds of the mayor, aldermen and inhabitants of New Orleans, to the order of the president and directors of said company, for the full amount of stock subscribed by the corporation aforesaid, say five hundred thousand dollars, bearing an interest of five per centum per annum, payable in forty years, the interest on said bonds to be paid semi-annually; and should the bonds taken by said company, from the corporation

aforesaid, be sold at a premium, such premium or excess, over and above their par value, shall form a part of the sinking fund, as provided for in the twenty-third section of this act.

SECT. 42. *Be it further enacted, etc.*, That when, after the expiration of thirty-five years, the said corporation of New Orleans shall be inclined to buy the said waterworks from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the Commercial Bank of New Orleans, and five by the City Council of New Orleans; said arbitrators not to be stockholders in said company, nor members of the City Council of New Orleans. Said arbitrators shall take into consideration the *value* of the waterworks and grounds appertaining thereto, for supplying the city and faubourgs of New Orleans with water by the said company; and if they agree, and so report, in *writing*, their award shall be binding on the respective parties. But in case of disagreement, the judge of the judicial district court in which the said waterworks are situated, shall appoint as umpires, five disinterested individuals as above, whose decision and award, *in writing*, reported to the judicial district court aforesaid, shall be binding and conclusive. And the amount so agreed upon, shall be payable in the bonds of the mayor, aldermen and inhabitants of New Orleans, bearing an interest of five per centum per annum, interest payable thereon semi-annually, and redeemable in not less
261 than ten, nor more than thirty years from the day on which said award shall be signed, and the said waterworks delivered over to the said corporation of New Orleans.

SECT. 43. *Be it further enacted, etc.*, That in case the mayor, aldermen and inhabitants of New Orleans shall deem it unadvisable or inexpedient to purchase the said waterworks from the Commercial Bank of New Orleans, as provided for in sections four and forty-two, and so notify the Commercial Bank of New Orleans thereof, at any time within eighteen months thereafter, the bonds given by the mayor, aldermen and inhabitants of New Orleans, for the amount of stock owned by the corporation of New Orleans, shall be renewed by the Commercial Bank of New Orleans for twenty-five years, on the same terms and conditions as provided for in sections twenty-one and forty-one of this act; *provided, however*, the amount formed by the sinking fund herein provided, shall be applied to the payment of said bonds, as far as it will go, and the bonds only renewed for such balance as may not be made up by the sinking fund aforesaid.

SECT. 44. *Be it further enacted, etc.*, That the corporation of New Orleans shall and may continue to make use of the waterworks now owned by the said corporation, for supplying the city with water, until the Commercial Bank of New Orleans shall be so far advanced with the works contemplated by this act, as will enable them to furnish water in such parts of the city as are now supplied by the works at present in operation; or until, by the progress of the waterworks so to be constructed, it may become necessary to remove the pipes at present in use, should such removal be found necessary.

SECT. 45. *Be it further enacted, etc.*, That the said company, in constructing the waterworks aforesaid, shall purchase from the mayor,

aldermen and inhabitants of New Orleans, the pipes already laid down by said corporation, at such price as may be agreed upon by seven arbitrators, of whom the superintendent of the works proposed to be constructed, shall be one, and three to be chosen by the president and directors of the Commercial Bank of New Orleans, and three by the City Council of New Orleans, whose award, as to the *value* of said pipes, for the use of said company, shall be final.

262 SECT. 46. *Be it further enacted, &c.*, That it shall be the duty of the said Bank, to sell to the best advantage, the bonds received of the mayor, aldermen and inhabitants of the city of New Orleans, for their subscription, and to contract for the payment of the interest thereof, at such place or places as the president and directors may deem expedient. *Provided* that any additional charge, loss or exchange, or other expenses, consequent upon the sale of the bonds, or payment of such interest in any other place than New Orleans, shall be wholly defrayed by the Bank.

SECT. 47. *Be it further enacted, &c.*, That during the first term of thirty days, in which the subscription books shall remain open, as provided for in section first, no person shall be allowed to subscribe, who is not a citizen of the United States and a resident of this State, of which facts the commissioners shall be the sole judges; and that all subscriptions shall be made in person, or under a notarial power, executed by not more than three persons. *Provided, however*, this section shall not be so construed as to prevent subscriptions, after the first term of thirty days, either in person or by proxy, should the books be re-opened. And that no individual, commercial firm or corporation, shall be allowed a greater number of votes than one hundred, for the election of directors of said Bank, either by proxy or otherwise, in his, her or their name.

SECT. 48. *And be it further enacted, &c.*, That the president and directors of the Commercial Bank of New Orleans, may, at such time as they may deem it expedient, establish agencies at such places as they may think proper, for the purchase of bills of exchange and sale of Bank checks; and may appoint such officers as they may think proper for the administration of the same.

(Signed) ALCEE LABRANCHE,
Speaker of the House of Representatives.

(Signed) C. DERBIGNY,
President of the Senate.

Approved April 1, 1833.

(Signed) A. B. ROMAN,
Governor of the State of Louisiana.

263 *Act 33, Offered with Complainant's Testimony.*

Official.

Laws of the State of Louisiana.

Published by authority.

Extra session of 1877.

No. 33.] AN ACT

To enable the City of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Waterworks Company;" to authorize the said Company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of Waterworks bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the City of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That a corporation be, and the same is hereby created, to be styled "The New Orleans Waterworks Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

SEC. 2. *Be it further enacted, etc.,* That immediately after the organization of the said Waterworks Company, as hereinafter provided, it shall be required to issue to the City of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of Waterworks bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of
264 said capital stock shall be reserved for the benefit of all holders of Waterworks bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this act; and the said Waterworks Company shall issue to the said City of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said Waterworks bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Waterworks bonds for stock, as aforesaid, the City of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Waterworks Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the City of New York, give notice that it will exchange said stock at par for said Waterworks bonds at par, exclusive of the overdue coupons attached to said bonds, which

shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said City of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

SEC. 3. *Be it further enacted, etc.*, That the said Waterworks Company shall be organized by the Mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Waterworks bonds, which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of Finance, the said subscribers shall assemble together, on a day to be named
265 by the Mayor, and shall elect a Board of Directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first Board of Directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said Board shall elect one of their number as President.

SEC. 4. *Be it further enacted, etc.*, That as soon after the election of said Board of Directors as the City Council may determine, the Mayor of the city shall transfer, by notarial act, to said New Orleans Waterworks Company the Waterworks and all the property appurtenant thereto.

SEC. 5. *Be it further enacted, etc.*, That the said Waterworks Company shall own and possess the privileges acquired by the City of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this act the exclusive privilege of supplying the City of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city, or to distribute the same to the inhabitants of said city; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper, in order to

ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city of New Orleans: *Provided*, the same shall not be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and
266 establish by-laws for its government and that of its officers and employés, not repugnant to this Act and the Constitution of the State and of the United States, or the ordinances of the City of New Orleans.

SEC. 6. *Be it further enacted, etc.*, That on the first Monday of July, eighteen hundred and seventy-eight, and annually thereafter, an election for directors of said company, after ten days' notice of the same and place of holding the same, shall be held, at which election there shall be elected four Directors by all the stockholders other than the City of New Orleans; and the Mayor of the city, the Administrator of Waterworks and Public Buildings and the Administrator of Finance of said city, shall be *ex-officio* Directors of said company; the said city, through its Mayor and Administrators, shall have the right to vote at the election of Directors, and at all meetings of said stockholders, in the same manner as any other stockholders. That at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The directors elected shall serve for one year, and shall hold their offices until their successors are appointed; and no failure to elect directors at the time designated, shall prevent the Board of Directors from fixing another day for holding the election; and in case of vacancy in the Board of directors, occasioned by death, resignation or absence from the State, or other cause, the Board of Directors may fill such vacancy for the remainder of the year.

SEC. 7. *Be it further enacted, etc.*, That the stock owned by said City of New Orleans in said Waterworks Company, shall not be liable to seizure for the debts of said city.

SEC. 8. *Be it further enacted, etc.*, That the stock of said Waterworks Company may be increased to two millions of dollars, for the purpose of enabling said company to improve, enlarge and extend its works: *Provided*, that the new or increased stock shall be paid for in cash or in work done for the company; and in case of nonpayment of instalments on stock subscribed for, the same may be forfeited to the use of said company.

SEC. 9. *Be it further enacted, etc.*, That the Board of Directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of
267 pure water; and to accomplish this purpose, the said Board of Directors are hereby authorized to issue the bonds of the company to an amount not exceeding two millions of dollars, in such sums, on such terms, and bearing such rate of interest as said Board may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corpora-

tion, and said mortgage may include the property and franchises of said company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the Parish of Orleans, shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re inscription: *Provided, however*, that no bond shall be issued, or mortgages given, without the consent of the Council of the city of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said Council of said city.

SEC. 10. *Be it further enacted, etc.*, That said company shall not declare or pay any dividends, except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt, nor shall any dividends be declared until the contemplated works are completed and in use.

SEC. 11. *Be it further enacted, etc.*, That the city of New Orleans shall be allowed to use water from the pipes and plugs of said company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets and charitable institutions, and that the said company shall place, free of any charge, whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of fires, for watering the streets and cleansing the gutters, and for any other public purpose; that on the squares which do not front on the river the hydrants shall be placed on opposite sides of the streets, at an equal distance
268 from each other and the corners. It shall be the duty of the said company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Waterworks Company, used in accordance with this act, shall be exempt from taxation—State, municipal, and parochial.

SEC. 12. *Be it further enacted, etc.*, That the said Waterworks Company shall have the right in the City of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water: *Provided*, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs, and that said streets shall be restored to the same condition they were in as soon as practicable, by the said company, under the supervision of the city surveyor. In case the said Waterworks Company shall require any lot of ground in the City of New Orleans, or any lot of ground or quantity of land situated in any parish of this State, for the purpose of constructing reservoirs or other works, or for the purpose of laying pipes to conduct water to the City of New Orleans, and shall not be able to agree with the proprietor or proprietors of

said lot of ground or land, the said company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may hereafter be enacted, and if the object of said company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not to the rights of absolute ownership.

SEC. 13. *Be it further enacted, etc.*, That the said Waterworks Company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi river, or elsewhere, as may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this act, and shall be year by year completed, so that, within five years from the date of this act, they shall be completed so as to give an adequate supply of water to the people of the
269 City of New Orleans, exclusive of the Fifth District. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein, and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said company shall, from time to time, as the wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum, extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said Waterworks Company to comply with this provision shall work a forfeiture of this charter.

SEC. 14. *Be it further enacted, etc.*, That the City of New Orleans, through its Council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be agreed upon between the City Council and the holders of such bonded or floating debt: *Provided*, said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the Council reserving the right to reject any and all bids.

SEC. 15. *Be it further enacted, etc*, That the said Waterworks Company shall have the right to fix the rates of charges for water: *Provided*, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the City Council shall have the power to appoint a committee, of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profits shall exceed ten per cent., the City Council shall have the right to require said company to reduce the price of water in such manner, and in such a proportion, that the profits shall never ex-

ceed the above named rates: *And, provided further*, that the rates charged shall never exceed those now paid by the city, and in case said company shall refuse compliance, the demand of said
270 city may be enforced by a writ of mandamus.

SEC. 16. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its suburbs, or shall change, alter, remove, injure or destroy any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the City of New Orleans, under the authority of this act; or if any person shall alter, change, or pollute the water or stream which the said company shall hereafter introduce, or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such offense, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offense, and imprisoned for a term not exceeding seven years, such fine to be paid and applied to the use of said company.

SEC. 17. *Be it further enacted, etc.*, That until other works are constructed by which the present works may be dispensed with, the same shall remain under the control of the City Council, and the superintendence thereof remain in the hands of the Administrator of Waterworks and Public Buildings; but the said company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be *ipso facto* extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privilege of
271 laying pipes to the river, exclusively for his own or their own use.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL. A. STRONG,
Secretary of State.

Offered with complainant's testimony.

No. 43.] AN ACT

Relative to the Charter of the New Orleans Waterworks Company and amending an Act number Thirty-three of Extra Session of eighteen hundred and seventy-seven (1877), approved March 31st, 1877.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That, at the election to be held, on the first Monday of July, eighteen hundred and seventy-eight (1878,) and annually thereafter, for Directors of the New Orleans Waterworks Company, the stockholders of the said New Orleans Waterworks Company shall elect four Directors; but the city of New Orleans shall not vote at said elections, she being already fully represented, for the amount of her stock, by the Mayor of the city, the Administrator of Waterworks and Public Buildings, and by the Administrator of Finance, who are *ex-officio* Directors of said company.

SEC. 2. *Be it further enacted, etc.*, That section ten (10) of said Act Number Thirty-three (No. 33.) of Extra Session of the year eighteen hundred and seventy-seven (1877,) be amended and re-enacted so as to read as follows: "That said company shall not declare or pay any dividends except in cash, and then only out of the net semi-annual or annual receipts after payment of expenses of operation, and gradual extension, and the interest on its bonded debt."

SEC. 3. *Be it further enacted, etc.*, That section seventeen (17) of aforesaid Act be amended and re-enacted so as to read as follows: "That at the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privilege or right to supply water according to the provisions of the charter."

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SEC. 4. *Be it further enacted, etc.*, That the time allowed to the said New Orleans Waterworks Company to commence and proceed to the erection of new works and pipes, (as contemplated by said Act Number Thirty-three,) (No. 33,) shall commence six months after the organization of said company, and not from the date of the passage of said act.

SEC. 5. *Be it further enacted, etc.*, That the full, complete and adequate supply of water referred to in section thirteen (13) of said Act No. 33, shall be so construed as to require a supply of water at the height of not less than fifteen (15) feet from the ground wherever the pipes of the Waterworks now exist.

SEC. 6. *Be it further enacted, etc.*, That the word "State" in section eleven (11) of said Act No. 33 of 1877, and in the last line thereof,

be stricken out, so that the said company shall not be exempt from State taxation.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws contrary to the provisions of this Act, or in conflict therewith, are hereby repealed to the extent that they do conflict, and that this Act shall take effect from and after its passage.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved February 26, 1878.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL. A. STRONG,
Secretary of State.

273 *Act No. 56, Offered with Complainant's Testimony.*

No. 56. AN ACT

To provide for the supply of water to the City of New Orleans, by the New Orleans Water Works Company, in cases of the municipal taxation of said company; to authorize provision to be made for the payment of water supplied and to be supplied; to provide for obtaining a supply of clear or filtered water by the New Orleans Water Works Company, and to enable the city of New Orleans to contract for the same; to regulate the payment of taxes imposed on said company contrary to the exemption given in its charter and to put into effect Section 11 of Act No. 33 of Acts of 1877, E. S., in instances of refusing or contrary to the exemption therein.

Whereas, Due notice and advertisement has been given and made of the intention to apply for this Act pursuant to Article 48 of the Constitution of this State; and

Whereas, The New Orleans Water Works Company *Company* is being subjected to municipal taxation notwithstanding the exemption from taxation granted by its charter in consideration of water to be supplied to the city of New Orleans; and

Whereas, It is possible and desirable to furnish the inhabitants of New Orleans with clear or filtered water from the Mississippi river; therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That in all instances of the taxation of the franchises or property of the New Orleans Water Works Company for
274 any year or years by or for the city of New Orleans, or for municipal purposes, whether such taxation be for past or future years, and the said company be in any manner obliged to pay, notwithstanding the exemption granted in Section 11 of Act No. 33 of Acts of 1877, E. S., then, in all such instances, the said

city of New Orleans is hereby empowered and required to pay the said company the value of all the water the said company has supplied or shall supply during any year or years, for which said taxes have been or shall be levied, to or for the use and purposes of the city of New Orleans, its public buildings, markets, or for streets, gutters, extinguishment of fires or other public purposes.

SEC. 2. Be it further enacted, etc., That in all instances of such taxation, contrary to said exemption, or any future year or years, the city of New Orleans shall provide in its budget, or shall set apart and appropriate a sum sufficient to pay for the said water supply for said year or years; and unless this be observed and done, the said company shall not be compelled to deliver water for the uses and purposes aforesaid.

SEC. 3. Be it further enacted, etc., That any taxes already imposed for any year, contrary to said exemptions, shall not be exacted, nor any penalty or interest accrued be demanded thereon, or any begin to run until said city shall have provided for the payment of the water supplied in said year, or provision made therefor by remedy at law or equity.

SEC. 4. Be it further enacted, etc., That to secure the in-
275 habitants of New Orleans and to the use of the city a supply of filtered or clear water, the city of New Orleans be and is hereby empowered to contract with the said company, and determine upon terms and conditions, and fix a price for obtaining from said company such supply of clear or filtered water.

SEC. 5. Be it further enacted, etc., That nothing in this act shall be construed as in any manner abridging or otherwise affecting any of the rights, franchises and privileges heretofore granted to said company; but all such rights, franchises and privileges shall continue and belong to said company.

SEC. 6. Be it further enacted, etc., That all laws or parts of laws inconsistent herewith be and are hereby repealed, and this act shall have effect from and after its promulgation.

H. W. OGDEN,
Speaker of the House of Representatives.
CLAY KNOBLOCH,
Lieutenant Governor and President of the Senate.

Approved 7th July, 1884.

S. D. McENERY,
Governor of the State of Louisiana.

A true copy from the original.

OSCAR ARROYO,
Secretary of State.

276 *Transfer of Property by the Commercial Bank of New Orleans to City of New Orleans, Marked B 5, Offered with Complainant's Testimony.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this nineteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and the ninety-third of the Independence of the United States of America, before me—

Andrew Hero, Jr., a notary public in and for the parish of Orleans and official notary for the city of New Orleans, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable John R. Conway, mayor of the city of New Orleans and herein acting in such capacity of mayor under and by virtue of resolution number 1232, new series, passed by the honorable the common council of New Orleans, approved January the sixteenth, 1869, a certified copy of which is hereto annexed for reference, and the same is in the words and figures following, to wit:

Resolved, That in order to complete the purchase and delivery of the water works purchased from the Commercial Bank of New Orleans the mayor be, and is hereby, authorized to sign a notarial act acknowledging delivery of the same and the movable and
277 immovable property included in said purchase; and on the signing of such act by the president of the Commercial Bank, duly authorized, the mayor be, and is hereby, authorized to give his obligation to deliver to said president of the Commercial Bank, within sixty days from the signing of such act, bonds of the city of New Orleans to the amount of thirteen hundred and ninety-three thousand and four hundred dollars, having thirty years to run, and bearing interest at the rate of five per centum per annum from the first day of January, 1869, payable semi-annually on the first day of January and the first day of July in each and every year, provided the same meet with the approval of the city attorney.

And also came and appeared Felix Labatut, president of the Commercial Bank of New Orleans, a duly incorporated institution of this State, and herein acting in such capacity of president under and by virtue of a resolution passed at a meeting of the board of directors of said bank held on the thirteenth day of January instant, a duly certified copy of which said resolution is hereto annexed for reference.

Which said parties declared that whereas by an act of the Legislature of this State incorporating the said Commercial Bank and granting it the privilege of conveying water from the Mississippi river into the city of New Orleans and its faubourgs and into the houses of its inhabitants, entitled "An act to incorporate the Commercial Bank of New Orleans," approved April 1, 1833, it was provided by the 4th and 42d sections thereof that at any time after the

expiration of thirty-five years from the passage of said act it
278 shall be lawful for the corporation of the city of New Orleans to purchase from said Commercial Bank of New Orleans the water works to be constructed by said company by virtue of said act at a price to be fixed by arbitrators of whom five shall be chosen by the president and directors of said Commercial Bank of New Orleans and five by the city council of New Orleans, and that the award of said arbitrators, in writing, in case of their agreement, should be binding on the respective parties, and that the amount so decided upon should be payable in bond- of the mayor, aldermen, and inhabitant- of New Orleans, bearing an interest of five per centum per annum, payable semi-annually, and redeemable in not less than ten nor more than thirty years from the day on which said award should be signed and the said water works delivered over to the said corporation of New Orleans ;

And whereas the city of New Orleans has deemed it expedient to purchase the said water works, as provided for in sections 4 and 42 of the aforesaid act, and has signified its intention so to do under and by virtue of resolution No. 869, new series, passed by the honorable the common council of New Orleans and approved March 27th, 1868, a certified copy of which said resolution is hereto annexed, and it is in the words and figures following, viz:

No. 889, new series.

Whereas, by an act of the Legislature of the State of Louisiana to incorporate the Commercial Bank of New Orleans, approved April 1, 1833, establishing a company in the city of New Orleans invested with banking privileges, and to be entitled the "Commercial
Bank of New Orleans," the chief object of which said com-
279 pany is to be the conveying of water from the river into the city of New Orleans and its faubourgs and into the houses of its inhabitants;

Whereas the first section provides the original capital stock shall be three millions of dollars ;

Whereas the fourth section provides that at any time after the expiration of thirty-five years from the passage of this act it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans the water works constructed by said company in virtue of this act, and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided ;

Whereas the thirty-eighth section provides that the corporation of New Orleans shall be supplied by said company, free of charge, with all water necessary for the extinguishment of fires and other public purposes; as they progress in laying aqueducts they shall place, free of any charge whatever, two hydrants of proper constructions in front of each square, and the said company shall supply a sufficient quantity of clear, pure, and wholesome water for the use of its inhabitants at the elevation of fifteen feet when the same may be required ;

Whereas the forty-second section provides that if after the expiration of thirty-five years the said corporation of New Orleans shall be inclined to buy the said water works from the Commercial Bank of New Orleans the price shall be fixed by arbitrators, five
280 of whom shall be chosen by the president and directors of the Commercial Bank of New Orleans and five by the city council of New Orleans; said arbitrators shall take into consideration the value of the water works and grounds appertaining thereto, and the amount so agreed upon shall be payable in bonds bearing five per cent. interest, redeemable in not less than ten nor more than thirty years: Therefore be it—

Resolved, That the city of New Orleans will purchase the Commercial Water Works upon the terms and conditions as provided for in an act of the Legislature of the State of Louisiana to incorporate the Commercial Bank of New Orleans, approved April 1, 1833.

(Signed) WM. T. HEPP,
President Board of Assistant Aldermen.

(Signed) JAMES GRAHAM,
President Board of Aldermen.

Approved March 27, 1868.

(Signed) E. HEATH, *Mayor.*

A true copy.

D. K. WHITAKER, *Secretary.*

And whereas, agreeably to the provisions of said section 42 of the aforesaid act of the Legislature incorporating said Commercial Bank of New Orleans, the common council of the city of New Orleans, at a joint session thereof held on the 7th April, 1868, elected Messrs. Josiah B. Richardson, Edward Filleul, John M. G.
281 Parker, William H. Bell, and Daniel Blair, all of this city, as the five arbitrators on the part of the city, and at a subsequent joint session of said council held on the 5th day of May, 1868, John Lockwood, of this city, was elected as one of the five arbitrators on the part of the city in the place of Daniel Blair, previously elected, but who had resigned the position of such arbitrator, as will appear by reference to the annexed extract from the minutes of said common council, and the president and directors of said Commercial Bank, agreeably to said section No. 42, at a meeting thereof held on the 2d day of May, 1868, elected Messrs. William C. C. Claiborne, John Community, Frank H. Hatch, James Freret, and Joseph Hernandez, all of this city, as the five arbitrators on the part of the said Commercial Bank of New Orleans, as will appear by reference to the annexed extract from the minutes of the proceedings of the said meeting;

And whereas the said ten arbitrators, after having taken into consideration the value of the said water works and grounds appertaining thereto for supplying the city and faubourgs of New Orleans with water by the said company, agreed and fixed the price at which said water works and all its appurtenances (with the exception of

said buildings and lot of ground situated on Dryades street) should be sold to the city of New Orleans for the sum of two millions of dollars, payable in bonds of the city of New Orleans, as provided for by the 42d section of the charter of said bank, which said report is in the words and figures following, to wit:

To the honorable mayor and common council of New Orleans:

282 We, the undersigned, having been appointed by the city of New Orleans and the Commercial Water Works Company arbitrators for the purpose of fixing the price for which said water works and its appurtenances are to be sold to said city of New Orleans, five of us having been appointed by the common council of said city, namely:

J. M. G. Parker, Josiah B. Richardson, John Lockwood, Edward Filleul, and William H. Bell;

And five by the said Commercial Water Works Company, namely:

W. C. C. Claiborne, John Communy, Frank H. Hatch, James Freret, and Joseph Hernandez;

After having met several times and examined thoroughly the property of said company and taken into consideration the value of the water works and grounds appertaining thereto for supplying the city and faubourgs of New Orleans with water by said company, hereby fix the price of said water works, in pursuance to the 42d section of the charter of said corporation, at the sum of two millions of dollars, for which price the water works and all its appurtenances (with the exception of the buildings and lot of ground situated on Dryades street) are to be sold by the said corporation to the city of New Orleans, the said sum payable in bonds of the city of New Orleans, as provided by the 42d section of the charter of said bank.

(Signed)

JOHN LOCKWOOD.	W. C. C. CLAIBORNE.
JOSIAH B. RICHARDSON.	F. H. HATCH.
J. HARNANDEZ.	E. FILLEUL.
W. H. BELL.	J. M. G. PARKER
283 JN. COMMUNY.	JAS. FRERET.

New Orleans, July 22nd, 1868.

All relative to which will more fully appear by reference to the annexed certified extract from the proceedings of the board of assistant aldermen of the common council of the city of New Orleans, at a meeting thereof held on the 28th day of July, 1868.

And whereas the city of New Orleans is a stockholder in the capital stock of the said Commercial Bank of New Orleans for five thousand shares of one hundred dollars each, by reason of which the said city is entitled to a credit of five hundred thousand dollars on the aforesaid sum of two millions of dollars agreed upon by the said arbitrators as the price which the said city of New Orleans should pay for said water works and appurtenances. Said city is also entitled to a further credit on said price of the sum of one hundred and six thousand six hundred dollars, the same arising from its interest as such stockholder in and to the cash pertaining to the

sinking fund created under the provisions of the 23d section of the charter of said Commercial Bank, and which said sums of five hundred thousand dollars and one hundred and six thousand six hundred dollars, making the total sum of six hundred and six thousand six hundred dollars, being deducted from the said price and sum of two millions of dollars makes the amount which said city of New Orleans is to pay for the aforesaid water works, with the appurtenances and ground appertaining thereto, the sum of one million three hundred and ninety-three thousand and four hundred dol-
284 lars, payable in bonds, which the said city is authorized to execute and deliver under the provisions of an act of the General Assembly of this State, entitled "An act to amend an act entitled An act to incorporate the Commercial Bank of New Orleans, approved April 1st, 1833; approved July 22nd, 1868:"

Now, therefore, in consideration of the premises and in order to give the city of New Orleans an authentic title to the said water works and all appurtenances thereto pertaining, the said Felix Labutut moreover declared, in his said capacity, that by virtue of the authority in him vested by the aforesaid resolution of the board of directors of said Commercial Bank of New Orleans, and for the consideration and on the terms and conditions hereinafter expressed, he does by these presents deed, grant, bargain, sell, convey, transfer, assign, set over, and deliver unto the city of New Orleans, herein represented by the said Honorable John R. Conway, mayor thereof, who accepts the same for the said city and its assigns and acknowledges delivery and possession thereof—

All and singular the property, real and personal, of whatever nature of kind soever, belonging to the water works constructed and established by the said Commercial Bank of New Orleans, and the dykes, mounds, reservoirs, machinery, engines, boilers, conduits, acqueducts, pipes, tools, and other appurtenances appertaining thereto.

And the real estate aforesaid is described as follows, to wit:
285 1st. A certain square of ground, together with the reservoir, buildings, and all other improvements thereon, and the rights, servitudes, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the Faubourg Annunciation, first district of this city, designated by the number eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated the fifteenth day of May, one thousand eight hundred and seven, which said square is bounded by Religious, St. Thomas (formerly St. John the Baptist), Richard, and Market streets, and it has a front on each of the said streets of three hundred feet. Said square of ground was acquired by the said Commercial Bank of New Orleans by purchase and as the last and highest bidder thereon at a public sale thereof, made by George Washington Morgan, sheriff of the parish of Orleans aforesaid, on the fifth day of May, one thousand eight hundred and thirty-four, under and by virtue of an order of seizure and sale to him directed by the honorable the parish court of the parish of Orleans at the suit of Didier Dreux *vs.* John Green, number 7377 of the docket of the said court, as per the

deed of sale in the premises, hereunto annexed, made by the said sheriff and bearing date the nineteenth day of May, A. D. eighteen hundred and thirty-four: and by an act passed before Hilary B. Cenas, late a notary in this city, on the nineteenth day of May, eighteen hundred and thirty-four, John D. Bein, James Peuch, John Armstrong, William S. Leverich, Alexander McKeever, Isaac
286 L. McCay, and Sarah Matilda Beck, parties to said act and joint proprietors of said square of ground at the time of the public sale thereof made as aforesaid, did severally and each for the proportion of the square of ground claimed by him or her therein ratify and confirm the said sheriff's sale and hold the same binding on them in the same manner and to the same extent as if it had been their own proper act and will, all in relation to which will more fully appear in the said act, to which reference is hereby made.

2nd. A certain piece or portion of ground, together with all the buildings and improvements thereon, and the machinery, boilers, engines, cisterns, rights, privileges, servitudes, ways, and appurtenances thereunto belonging or in anywise appertaining, situated in the suburb Lacourse, first district of this city, in the square bounded by New Levee, Tchoupitoulas, Richard, and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street, and three hundred and thirty-three feet seven inches and three lines on a straight line running from the termination of the line of New Levee street aforesaid to the termination of the line on Tchoupitoulas street aforesaid, parallel to Orange street, and dividing the said piece or portion of ground from the properties now or formerly belonging to A. Caldwell and R. Toledano, which forms the remainder of said square.

287 Said piece or portion of ground was, prior to its acquisition by the said Commercial Bank of New Orleans, divided into twenty lots, and they were acquired by said Commercial Bank as follows, to wit: Eight thereof designated by the numbers "1," "2," "3," "4," "5," "18," "19," and 20 on a plan thereof drawn by Charles F. Zimpel, surveyor, and deposited in the office of G. R. Stringer, late a notary in this city, as plan No. 4, and measuring together one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street and one hundred and eighty-four feet four inches and seven lines front on Richard street, forming the corner of Tchoupitoulas and Richard street-, in said square, by purchase and as the last and highest bidder thereon at a public sale thereof made by George W. Morgan, sheriff of this parish, on the sixteenth day of June, A. D. eighteen hundred and thirty-four, by virtue of an order of execution to him directed by the district court of the first judicial district of the State of Louisiana in a suit of partition entitled John Green and J. W. Justamond *vs.* Widow Maguire, in her own name and as tutrix of her minor child, No. 11213 of the docket of said court, as per the said sheriff's deed of said sale, dated the 10th day of July, 1884; also seven thereof designated by the numbers "1," "2,"

"3," "4," "5" "6," and "7" on a plan drawn by said Surveyor Zimpel, dated 27th of April, 1832, and deposited in the office of said late notary, H. B. Cenas, which said seven lots measure together seventy-one feet nine inches and six lines front on New Levee street and one hundred and ninety-nine feet two inches and four lines front on Richard street, forming the corner of New Levee and Richard streets, in
288 said square, by purchase from Levi Pierce, as per the act of sale thereof passed before the said late notary, H. B. Cenas, on the 13th day of April, 1835; also two thereof designated by the numbers "9" and "10" on a plan drawn by said Surveyor Zimpel, deposited in the office of said notary, G. R. Stringer, and measuring together forty-eight feet front on New Levee street, by purchase from Pascal M. Tourne and Nicholas Beckwith, as per the act of sale thereof, passed before the said late notary, H. B. Cenas, on the 3rd day of April, 1835; lastly by the three remaining of said lots, designated by the numbers "6," "7," and "8" on a plan drawn by Surveyor Zimpel in the year 1832, and deposited in the office of said notary, G. R. Stringer, measuring together seventy-two feet front on New Levee street, by purchase from Alexander Grailhe, as per the act of sale thereof passed before the said late notary, H. B. Cenas, on the 14th day of February, 1839; and by an act of compromise entered into between the said Alexander Grailhe and the said Commercial Bank of New Orleans, and passed before the said notary, H. B. Cenas, on the 13th day of December, 1844, certain matters of dispute between the said parties growing out of said sale were settled to their mutual satisfaction.

And the personal property herein transferred having been delivered to the commissioners of the water works of said city of New Orleans, and they being satisfied with the quantity of the articles so delivered, the said Mayor Conway hereby dispenses with a particular and exact inventory thereof for annexation hereto, as is otherwise required by law.

289 By reference to the annexed certificates of the register of conveyances and the recorder of mortgages in and for this city and parish, dated this day, it will be seen, first, that the real estate and appurtenances herein described have not been alienated by said Commercial Bank of New Orleans prior to the date hereof, and stand registered in its name; and, second, that the said property is free from encumbrances in the name of said bank, with the exception of the privilege of drainage; and also the general mortgage in favor of the city of New Orleans for the sum of two thousand three hundred and ninety-two dollars, with interest, costs, &c., resulting from a judgment rendered by the honorable the second district court of New Orleans on the thirteenth day of March, eighteen hundred and fifty-eight, against the Commercial water works for taxes of eighteen hundred and fifty-six:

To have and to hold the said property and appurtenances unto the city of New Orleans and its assigns forever.

And the said Labatut, in his said capacity, moreover transfers unto the city of New Orleans all the rights and actions of warranty to which the said Commercial Bank of New Orleans is or may be en-

titled against all the former proprietors of the property herein conveyed, subrogating the said city of New Orleans to the said rights and actions to be by it enjoyed and exercised in the same manner as they might have been by said Commercial Bank of New Orleans.

This sale and transfer is made and accepted, in conformity with the above award of said arbitrators, agreeably to the aforesaid
290 deduction, agreed upon by and between the board of directors of said Commercial Bank of New Orleans and the city of New Orleans, for and in consideration of the price and sum of one million three hundred and ninety-three thousand four hundred dollars and interest, as hereinafter expressed; in settlement of which the said Mayor Conway hereby promises for and obligates the city of New Orleans to deliver or cause to be delivered within sixty days from and after the date of these presents unto the president of said Commercial Bank of New Orleans bonds of the city of New Orleans, signed by the mayor, comptroller, and treasurer thereof, amounting in the aggregate to the said sum of one million three hundred and ninety-three thousand four hundred dollars, and of such amounts as may be agreed upon, payable on the first day of January, A. D. eighteen hundred and ninety-nine, at the office of the city treasurer, and bearing interest at the rate of five per cent. per annum from and after the first day of January, A. D. eighteen hundred and sixty-nine, payable semi-annually on the first day of January and July of each and every year during the period aforesaid, at the office of said city treasurer, and for which interest the requisite number of coupons will be attached to each bond.

The aforedescribed real estate is exempted by law from the payment of all State and city taxes; and receipts have been produced and exhibited to me, notary, showing that eight several instalments for drainage have been paid on said property.

And finally it is understood and agreed to that the build-
291 ings and lot of ground situated on Dryades street and specified in the aforesaid report of the said arbitrators as being excluded from this sale and transfer is more particularly defined and described as a certain lot of ground, together with all the buildings and improvements thereon and all rights and privileges thereto belonging, situate in the first district of this city, in the square bounded by Dryades, Canal, Rampart, and Common streets, and measuring, in English measure, fifty-two feet front on Dryades street and forty-five feet in width in the rear by one hundred and five feet six inches in depth, being the same property which the said Commercial Bank of New Orleans acquired by purchase from Mrs. Marion Jackson by an act passed before said late notary, Hilary B. Cenas, on the second day of March, one thousand eight hundred and fifty-seven.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of Messrs. James Graham and George Cenas, witnesses of lawful age, domiciliated in this city, who hereunto sign their

names with the parties and me, the said notary, on the day and year set forth in the caption hereof, after due reading of the foregoing.

(Original signed) FELIX LABATUT, *President.*
JOHN R. CONWAY, *Mayor.*
ANDREW HERO, JR., *Not. Pub.*

JAS. GRAHAM.
GEO. CENAS.

Approved.
(Signed) HENRY J. LEOVY, *City Att'y.*

292 Registered in conveyance office, B. 96, fos. 65, 66, and 67.
New Orleans, March 22, 1869.
P. G. LARABIE, *D'y Reg.*

I certify that the above and foregoing is a true and correct copy of the original act extant in my notarial archives.
As witness my hand and seal, at New Orleans, this May 30, 1887.
ANDREW HERO, JR., *Not. Pub.*

Transfer, City of New Orleans to New Orleans Water Works Company, marked "B 6," offered with complainant's testimony.

N. O., *9th Ap'l*, 1878.

Transfer.

City of N. O. to N. O. Water Works Co. } No. 117.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans.*

293 Be it known that on this ninth day of the month of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the 102d—

Before me, Gustave LeGardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned—

Personally came and appeared—

The Honorable Edward Pilsbury, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents under and by virtue of a resolution No. 4416, administration series, adopted by the council of the city of New Orleans on the 26th day of March, 1878, a certified copy of which said resolution is hereto annexed for reference.

And also came and appeared—

Edward Toby, Esquire, of this city, herein appearing, stipulating and acting for and in the name and on behalf and as president of

the New Orleans Water Works Company, a corporation of this city, duly created by act No. 33 of the Legislature of this State, entitled "An act to enable the city of New Orleans to promote the public health and to afford greater security against fire by the establishment of a corporation to be called the 'New Orleans Water Works Company;' to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water-works bonds
294 to convert them into stock and to provide for the liquidation of the bonded and floating debt of the city of New Orleans," approved March 31st, 1877, and amended by act No. 43 of the Legislature of this State, entitled "An act relative to the charter of the New Orleans Water Works Company, and amending an act number thirty-three of extra session of eighteen hundred and seventy-seven (1877)," approved February 26th, 1878, the said Edward Toby herein acting as president aforesaid and duly authorized in the full execution of these presents under and by virtue of a resolution adopted by the board of directors of the said New Orleans Water Works Company at their sitting of the 8th day of April, 1878, a certified copy of which said resolution is hereto annexed for reference.

Which said appearers, in their respective capacity, severally declared and said—

That in compliance with the provisions and requirements of said act No. 33, approved March 31st, 1877, as amended by said act No. 43, approved February 26th, 1878, the said New Orleans Water Works Company has been duly organized.

That in accordance with the public notice given by the mayor the subscribers to the capital stock of the said New Orleans Water Works Company have assembled together at the office of the Merchants' Mutual Insurance Company, No. 104 Canal street, in this city, on the thirtieth day of March, 1878, between the hours of 12 m. and 2 p. m., and that then and there, in compliance with the provisions of section 3 of said act No. 33, as amended by said act No. 43,
295 they, the said subscribers, have elected the board of directors of the said New Orleans Water Works Company, as the whole will more fully appear by the process verbal of the meeting of the said subscribers, a certified copy whereof is hereto annexed for reference.

That in conformity with the provisions of said act No. 33 creating the said company it, the said New Orleans Water Works Company, has transferred and delivered to the city of New Orleans, as is hereby acknowledged by the said Mayor Pilsbury, for and in the name of the city of New Orleans, all the certificates for the shares of stock of the said New Orleans Water Works Company, amounting to twenty thousand shares of one hundred dollars each, forming the capital stock of two millions of dollars ($2,000,000) of said company.

That in further compliance with said act No. 33, approved March 31st, 1877, the stock thus transferred and delivered to the city of

New Orleans as aforesaid has been disposed of by the said city in the manner following, to wit:

1°. Amount of stock fully paid and not subject to assessment subscribed for by the city of New Orleans, six hundred and six thousand six hundred dollars	$606,600 00
2°. Amount issued to the city, in the proportion of one share of stock full paid and not subject to assessment for each and every one hundred dollars of water-works bonds funded in premium bonds, four hundred and fifty-one thousand four hundred dollars	451,400 00
3°. Amount issued to the city, in the proportion of one share of stock full paid and not subject to assessment for each and every one hundred dollars of water-works bonds redeemed by the city, one hundred and eleven thousand five hundred dollars	111,500 00
4°. Amount exchanged by the city with the subscribers to the capital stock of the said New Orleans Water Works Company, in the proportion of one share of stock full paid and not subject to assessment for each and every one hundred dollars of water-works bonds surrendered by the said subscribers to the city, five hundred and one thousand six hundred dollars	501,600 00
5°. Amount reserved for the benefit of all holders of water-works bonds who may elect to subscribe to the capital stock of the said New Orleans Water Works Company, to be exchanged by the city with the holders of said bonds in the proportion of one share of stock full paid and not subject to assessment for each and every one hundred dollars of said water-works bonds surrendered to the city, three hundred and twenty-eight thousand nine hundred dollars	328,900 00
Total amount of stock transferred and delivered to the city, two millions of dollars	$2,000,000 00

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297

Now, therefore, by virtue of the foregoing and in consideration of the two millions of dollars of stock hereinabove transferred and delivered to the city, the receipt whereof is hereby acknowledged by the said Mayor Pilsbury, he, the said Mayor Pilsbury, declared that by virtue of the authority in him vested by the aforesaid resolution No. 4416, administration series, and in compliance with section 4 of said act No. 33, approved March 31st, 1877, creating the said New Orleans Water Works Company, he, the said mayor, does by these presents, in his said capacity and for and in the name and on behalf of the city of New Orleans, grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranties and with full subrogation to all the rights and actions

of warranty to which the city of New Orleans is or may be entitled against all preceding vendors and owners, unto the said New Orleans Water Works Company, the said Edward Toby, as president aforesaid, accepting and purchasing for and in the name of the said New Orleans Water Works Company and acknowledging due delivery and possession thereof—

All and singular the property, real and personal, of whatever nature or kind soever, belonging to the water works constructed and established by the Commercial Bank of New Orleans and subsequently by the city of New Orleans, and the dykes, mounds, reservoirs, machinery and apparatus, engines, boilers, pumps, conduits, aqueducts, pipes, tools, and all appurtenances thereunto belonging or in anywise appertaining.

And the following real estate, to wit:

1°. A certain square of ground, together with the reservoirs, buildings, and all other improvements thereon, and the rights, servitudes, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the Faubourg An-
298 nunciation, in the first district of this city, designated by the No. eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated the fifteenth day of May, 1807; which said square is bounded by Religious, St. Thomas, formerly St. John the Baptist, Richard, and Market streets, and it has a front on each of the said streets of three hundred feet; and by a sketch made by J. A. D'Hemecourt, city surveyor, dated the 5th day of April, 1878, and hereto annexed for reference, the said square is designated by the No. eighty-three and measures three hundred and nineteen feet eight inches and two lines front on Religious street, three hundred and nineteen feet ten inches and one line front on St. Thomas street, three hundred and nineteen feet eleven inches and one line front on Market street, and three hundred and nineteen feet two inches and four lines front on Richard street.

2°. A certain piece or portion of ground, together with all the buildings and improvements thereon, and the machinery and apparatus, boilers, engines, iron chimney, and all the rights, privileges, servitudes, ways, and appurtenances thereunto belonging or in anywise appertaining, situate in the suburb Lacourse, in the first district of this city, in the square bounded by New Levee, Tchoupitoulas, Richard, and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street, and three
299 hundred and eighty-three feet seven inches and three lines on a straight line running from the termination of the line on said New Levee street to the termination of the line on Tchoupitoulas street aforesaid, parallel to Orange street and dividing the said piece or portion of ground from the property now or formerly belonging to A. Caldwell and R. Toledano, which form the remainder of said square, which is designated by the No. thirty-nine on the above-mentioned sketch by J. A. d'Hemecourt, according to

which said sketch said piece or portion of ground measures one hundred and ninety-one feet six inches and six lines front on New Levee street, one hundred and ninety-one feet seven inches and six lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and two lines front on Richard street, and three hundred and eighty-three feet and eight inches on said line dividing the said piece or portion of ground from the property of Caldwell and Toledano.

All of which said above-described property, real and personal, was acquired by the city of New Orleans by purchase from the Commercial Bank of New Orleans by act passed before Andrew Hero, Jr., a notary public in this city, on the nineteenth day of January, 1869.

3°. A certain square of ground, together with all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, comprised between Peters (late New Levee), Water, Orange, and Richard streets, and designated by the number thirty-two A, as per plan drawn by Louis St. Pilié, surveyor, dated the 29th of June, 1867,
300 and deposited for reference in the office of H. C. Dibble, a notary public in this city, as plan No. 19, according to which said plan said square is divided into twenty-eight lots, numbered from one to twenty-eight, inclusive, and they measure as follows, to wit:

Lot No. 1 forms the corner of Water and Richard streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear by one hundred and nine feet and four inches in depth and front on Richard street.

Lots Nos. two to eleven, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on Waters street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twelve forms the corner of Water and Orange streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear by one hundred and nine feet and four inches in depth and front on Orange street.

Lots Nos. thirteen and fourteen adjoin each other and measure each twenty-seven feet front on Orange street by one hundred and fifty-nine feet eight inches and four lines, more or less, in depth between parallel lines.

Lot No. fifteen forms the corner of Orange and Peters streets and measures twenty-six feet eight inches and six lines front on Peters street, twenty-six feet nine inches and four and a half lines
301 in width in the rear by one hundred and nine feet and four lines in depth and front on Orange street.

Lots Nos. sixteen to twenty-five, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on Peters street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twenty-six forms the corner of Peters and Richard streets

and measures twenty-six feet nine inches and five lines front on Peters street by one hundred and nine feet and four inches in depth and front on Richard street.

Lots Nos. twenty-seven and twenty-eight measure each twenty-seven feet front on Richard street by one hundred and fifty-nine feet eight inches and four lines in depth between parallel lines.

And by the above-mentioned annexed sketch of J. A. D'Hemecourt said square is designated by the No. 21 B, and measures three hundred and nineteen feet four inches and four lines front on Water street, three hundred and nineteen feet five inches and three lines front on Peters street, two hundred and seventy-two feet and eight inches front on Richard street, and same front on Orange street.

And the said square of ground was acquired by the city of New Orleans from John H. O'Connor, by act passed before Andrew Hero, Jr., a notary public in this city, on the sixteenth day of July, 1872:

To have and to hold the herein conveyed property unto the said New Orleans Water Works Company, its successors and as-
302 signs forever, by virtue of these presents, subject, however, to the provisions of section 17 of said act No. 33, approved March 31st, 1877, as amended by said act No. 43, approved February 26th, 1878.

By reference to the annexed certificate of the register of conveyances it does not appear that the herein-conveyed property had been heretofore alienated by the said vendor.

And now the said parties hereto declared that they do hereby dispense with the certificate of the recorder of mortgages and exonerate the undersigned notary from any and all responsibility for the non-production of said certificate.

Thus done and passed in New Orleans, at my office, the day, month, and year first above written, in the presence of Messrs. Armand Pitot, Jr., and Edward Pitot, competent witnesses, who have signed with the said parties and me, notary, after reading the whole.

(Original signed) E. PILSBURY, *Mayor.*
EDWARD TOBY, *President.*
EDW. PITOT.
A. PITOT, JR.
G. LE GARDEUR, JR.,
Not. Pub.

Registered in Conveyance Book No. 110, folio No. 453.
New Orleans, April 9th, 1878.

[Seal of Register of Conveyances.]

(Signed) D. B. PENN, *R. C.*

STATE OF LOUISIANA, }
City of New Orleans. }

303 I hereby certify the above and foregoing to be a true and correct copy of the original act on file and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my
[SEAL.] seal of office this 28th day of May, A. D. 1887.
(Signed) M. VOORHIES,
Custodian Notarial Records.

304 *Series of* 19 *Attested Copies of Ordinances Granting Authority to Individuals and Corporations to Lay Pipes, &c. Offered with Complainant's Testimony.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *October* 7, 1874.

(No. 2785, administration series.)

Resolved, That permission be, and the same is hereby, granted to George Faehnle to lay a water pipe from Canal Carondelet to premises No. 96, situated at the intersection of Robertson and Toulouse streets, for the purpose of pumping water from said canal to his planing mill, provided that said Faehnle obtains hereto the consent of the president of the Carondelet Canal and Navigation Company, and that said pipe shall be laid under the direction of the city surveyor, and that this permission may be revoked at any time at the pleasure of the city council.

Adopted by the council of the city of New Orleans October 6, 1874.

LOUIS A. WILTZ, *Mayor.*

A true copy.
DANIEL SCULLY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, 1887.

A true copy of resolution No. 2785, administration series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.] E. L. BOWER,
Chief Clerk.

305 MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 10, 1887.

No. 832, administration series.

Resolved, That permission, revocable at the pleasure of the city council, is hereby granted to Messrs. McIntyre & Applegate to introduce a two-inch pipe leading from the river to the marble works of Reynolds & Garber, foot of Washington street.

Adopted by the council of the city of New Orleans May 9, '71.
(S'g'd) BENJ. F. FLANDERS, *Mayor.*

(S'g'd) H. CONQUEST CLERKE, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of resolution No. 832, administration series, adopted

by the council, approved by the mayor, and duly promulgated in the official journal.

(Signed) E. L. BOWER,
[SEAL.] *Chief Clerk.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *November* 10, 1880.

(No. 6714, administration series.)

306 Resolved, That permission be, and is hereby, granted to the Louisiana Ice Manufacturing Company to erect the necessary machinery for an ice factory on Delta street, square 3 A, bounded by Front, Delta, Poydras, and Lafayette streets; and, further, to lay two pipes (one for receiving and the other for discharging) underground from the factory, on Delta street, to Poydras street and from Poydras street direct to the river; the pipes to be twelve-inch and the river end to be so constructed as not to interfere with the landing of steamboats. The streets and levee through which the said pipes are laid are to be replaced in the same good condition as before: Provided, that all the work to be done under the supervision and direction of the city surveyor and to the complete satisfaction of the administrators of commerce and improvements and the city surveyor: Provided further, that the said ice manufacturing company shall give security in a bond of one thousand ($1,000) dollars for the faithful performance of the work and as an earnest of their intention to keep the said street and levee where the pipes are laid and the excavations made in good repair until the earth above the pipes becomes solid and is so reported by the city surveyor.

Adopted by the council of the city of New Orleans November 9, 1880.

Yeas—Behan, Chevalley, Collins, Glynn, Isaacson, Marks.

I. W. PATTON, *Mayor.*

A true copy.
N. S. ABRAMS,
Assistant Secretary.

307 MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 25, '87.

A true copy of resolution No. 6714, administration series, adopted by the council of the city of New Orleans, approved by the mayor, and duly promulgated in the official journal.

(Signed) E. L. BOWER,
[SEAL.] *Chief Clerk.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Sept.* 27, 1886.

No. 1952, council series.

An ordinance to authorize the Lane Cotton Mills to change their pipe leading to the river.

Be it ordained by the city council, That the Lane Cotton Mills be,

and are hereby, authorized to substitute their pipe leading from said mills to the river with a new pipe.

Be it further ordained, That said substitution be made under the supervision of the city surveyor and the commissioner of public works.

Adopted by the council of the city of New Orleans Sept. 21, 1886.

W. H. MICHEL,
Assistant Clerk of Council.

Approved Sept. 27, 1886.

J. V. GUILLOTTE, *Mayor.*

308 MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of ordinance No. 1952, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER,
Chief Clerk.

[SEAL.]

MAYORALTY OF NEW ORLEANS,
CITY HALL, *October* 30, 1884.

No. 977, council series.

Resolved, That permission be, and is hereby, granted to Messrs. Manning & Renaud to lay pipes from their refinery, No. 104 and 107 North Peters street, to a point on the wharf, providing the said Manning & Renaud furnish a bond in the sum of five ($500) hundred dollars to replace the streets in good condition.

This privilege revocable at the pleasure of the council.

Adopted by the council of the city of New Orleans October 28, 1884.

M. McNAMARA,
Clerk of Council.

Approved October 30, 1884.

D. M. KILPATRICK,
Mayor pro tem.

A true copy.
TH. BUISSON,
Secretary to the Mayor.

309 MAYOR-LTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of resolution No. 977, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER,
Chief Clerk.

[SEAL.]

MAYORALTY OF NEW ORLEANS,
CITY HALL, *25th June*, 1883.

(No. 342, council series.)

An ordinance granting permission to the "Enterprise Ice Manufacturing Company" to erect all necessary machinery in their factory, corner of Peters and Pauline streets, and to lay water pipes in connection with the same with the Mississippi river.

Be it ordained by the council of the city of New Orleans, That permission be, and is hereby, granted to the "Enterprise Ice Manufacturing Company" to erect all necessary machinery on their premises, situated at the corner of Peters and Pauline streets, in the third district, and to lay pipes in connection with their factory across Peters street to the Mississippi river, to be used by the said factory as a water supply.

Provided, That the said "Enterprise Ice Manufacturing Company" binds itself to lay the above-mentioned pipes under the im-
310 mediate supervision of the commissioner of public works; and, further, to repair and replace the street and portion of the levee through which said pipes may be laid in the said good order and condition as when first broken up; all of which shall be performed to the entire satisfaction of the said commissioner.

Adopted by the council of the city of New Orleans 21st June, 1883.

W. H. MICHEL,
Assistant Clerk of Council.

Approved 25th June, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of ordinance No. 342, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *18th May*, 1883.

311 (No. 298, council series.)

Be it ordained, That permission be, and is hereby, granted to M. J. Deady to erect a "pottery" for the manufacture of earthenware on his property on Euphrosine between Willow and Claiborne streets; this permission revocable at the pleasure of the council.

Adopted by the council of the city of New Orleans 15th May, 1883.

M. McNAMARA,
Clerk of Council.

Approved 18th May, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of ordinance No. 298, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER,
Chief Clerk.

[SEAL.]

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January* 18, 1882.

(No. 7569, administration series.)

312 Resolved, That permission be, and is hereby granted White & Co. to lay an escape pipe from machinery in building No. 948 New Levee street to the Mississippi river, provided the streets are restored to their original condition upon completion of the work.

Adopted by the council of the city of New Orleans January 17, 1882.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealey, Walshe.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.
M. McNAMARA, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of resolution No. 7569, administration series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER,
Chief Clerk.

[SEAL.]

MAYORALTY OF NEW ORLEANS,
CITY HALL, 18*th January*, 1883.

(No. 68, council series.)

313 Resolved, That permission be hereby granted to Messrs. S. Hernsheim & Bro. to lay a pipe from *his* factory to the river on Julia street, according to lines and grades to be given by

the city surveyor, and the street to be repaired to the entire satisfaction of the commissioner of public works.

Adopted by the council of the city of New Orleans 16th January, 1883.

M. McNAMARA,
Clerk of Council.

Approved 18th January, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of resolution No. 68, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

MAYORALTY OF NEW ORLEANS,
CITY HALL, 1*st March*, 1883.

(No. 148, council series.)

314 Resolved, That permission be, and is hereby, granted Messrs. S. Hernsheim & Bro. to lay pipes through the streets connecting their factory, corner Julia and Magazine streets, with the Mississippi river, provided that the streets through which said pipes are laid are replaced in their original good condition, the work to be done under the supervision of the commissioner of public works and city surveyor.

Adopted by the council of the city of New Orleans 27th February, 1883.

M. McNAMARA,
Clerk of Council.

Approved 1st March, 1883.

M. D. LAGAN,
Mayor pro Tempore.

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of resolution No. 148, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *15th March*, 1883.

(No. 187, council series.)

315 An ordinance providing for the erection of all necessary machinery, boilers, and engines, and laying of water and sewerage pipes in connection with the Louisiana Sugar Refinery Company's works.

Be it ordained, That permission be, and is hereby, granted to the Louisiana Sugar Refining Company to erect all necessary machinery, boilers, and engines in their factory, in course of construction, in the square bounded by Front, Clay, Bienville, and Custom-House streets, and to lay water and sewerage pipes from said factory to the Mississippi river according to the lines and grades for same to be furnished by the city surveyor, provided that all excavations and streets, crossings, pavings, etc., broken up shall be replaced, repaired, and relaid to the entire satisfaction of the commissioner of public works, revokable at the pleasure of the council.

Adopted by the council of the city of New Orleans 13th March, 1883.

M. McNAMARA,
Clerk of Council.

Approved 15th March, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, 1887.

A true copy of ordinance No. 187, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

316 MAYORALTY OF NEW ORLEANS,
CITY HALL, *July* 18, 1882.

(No. 7952, administration series.)

Resolved, That permission be, and is hereby, granted Geo. L. Bright to lay a water pipe under the shell road from New Canal to Oakland park, under the direction of the city surveyor and administrator of improvements.

Adopted by the council of the city of New Orleans July 18, 1882.
Yeas—Delamore, Fagan, Fitzpatrick, Huger, Walshe.
Absent—Guillotte, Mealey.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.
M. McNAMARA, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of resolution No. 7952, administration series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER,
Chief Clerk.

[SEAL.]

MAYORALTY OF NEW ORLEANS,
CITY HALL, 1*st September*, 1883.

(No. 419, council series.)

317 Whereas a great source of complaint is the flowing of most offensive fluids in the gutters of Julia street, discharged from the oil factory of Maginnis & Bros. and Thomson's refinery, on Commerce, between Julia and St. Joseph streets, the same being pronounced as not only offensive, but unhealthy, as well as acting as an obstruction to the proper drainage of the section through which the same flows:

Therefore, be it resolved, That Messrs. Maginnis & Brothers and owners of Thomson's refinery be, and they are hereby, directed to lay suitable pipes to carry off all refuse matter to the river from their said factories, to wit: Maginnis & Bros., from their factory on Julia street, and the proprietors of Thomson's refinery, from their said factory on Commerce street to Julia street, thence to the Mississippi river; said pipes to be laid within sixty days from the passage of this ordinance, and the work to be done under the joint direction of the commissioner of public works and city surveyor.

SEC. 2. Resolved further, That in default of work being completed within sixty days from the passage thereof, said parties be proceeded against according to law, and any violations of the provisions of this ordinance be punishable by a fine of not less than $25 for each and every day they are in contravention, and imprisonment for not less than thirty days.

Adopted by the council of the city of New Orleans 28th August, 1883.

M. McNAMARA,
Clerk of Council.

318 Approved 1st September, 1883.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 26, '87.

A true copy of resolution No. 419, council series, adopted by the council of the city of New Orleans, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER, *Chief Clerk.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *24th April*, 1884.

(No. 679, council series.)

An ordinance granting permission to the firm of Ernst & Co. and John Foerster to construct and maintain water supply pipe from their rice mills to the Mississippi river.

1. Be it ordained by the council of the city of New Orleans, That Messrs. Ernst & Co. and John Foerster be, and they are hereby, permitted to construct and maintain a water supply pipe from their mills to the Mississippi river, provided said Ernst & Co. and John Foerster shall do all the work connected therewith, including
319 the replacing of the streets, stones, and paving, under the direction and to the entire satisfaction of the city surveyor and the commissioner of public works of the city of New Orleans; and provided, further, that the said Ernst & Co. and John Foerster shall execute and sign a notarial contract, with good and solvent security in the sum of five thousand ($5,000) dollars, conditioned that they shall properly restore the streets and crossings through which said pipe may pass.

2. Be it further ordained, That this ordinance shall take effect from and after its passage.

Adopted by the council of the city of New Orleans April 15, 1884.

M. McNAMARA,
Clerk of Council.

Approved 18th April, 1884.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of ordinance No. 679, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

E. L. BOWER, *Chief Clerk.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *22d March*, 1884.

No. 628, council series.

An ordinance granting permission to the Southern Brewing
320 Company to construct and maintain a water supply pipe from its brewery to the Mississippi river.

Be it ordained by the council of the city of New Orleans, That the Southern Brewing Company be, and it is hereby, permitted to construct and maintain a water supply pipe from its brewery through Toulouse street to the Mississippi river, provided said Southern

Brewing Company shall do all the work connected therewith, including the replacing of the streets, stones, and paving, under the direction and to the entire satisfaction of the city surveyor and the commissioner of public works of the city of New Orleans; and provided, further, that said Southern Brewing Company shall execute and sign a notarial contract, with good and solvent security in the sum of five thousand ($5,000) dollars, conditioned that it shall properly restore the streets and crossings through which said pipe may pass.

Be it further ordained that this ordinance shall take effect from and after its passage.

Adopted by the council of the city of New Orleans 18th March, 1884.

M. McNAMARA,
Clerk of Council.

Approved 21st March, 1884.

W. J. BEHAN, *Mayor.*

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of ordinance No. 628, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.] E. L. BOWER,
Chief Clerk.

321 MAYORALTY OF NEW ORLEANS,
CITY HALL, *19th January*, 1884.

(No. 549, council series.)

Resolved, That permission be, and is hereby, granted to Louis Ruch to lay a four-inch iron pipe from his mills to the river for the purpose of supplying said mills with the amount of water requisite to run the same.

This privilege revocable at the pleasure of the council, and said work to be done under the supervision of the city surveyor and commissioner of public works.

Adopted by the council of the city of New Orleans January 15, 1884.

M. McNAMARA,
Clerk of Council.

Approved 18th January, 1884.

M. D. LAGAN,
Mayor pro Tem.

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of resolution No. 549, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal

[SEAL.] E. L. BOWER,
Chief Clerk.

322 MAYORALTY OF NEW ORLEANS,
CITY HALL, *November* 16, 1882.

(No. 8148, administration series.)

Be it ordained by common council of the city of New Orleans that Robert E. Rivers or the lessee of the St. Charles Hotel, of the city of New Orleans, be allowed the right of way and privilege to lay a water pipe from the Mississippi river at any point opposite to the head of Common or Gravier street through either of those streets to said hotel, its fronts, and said streets, with all needed attachments and appurtenances, and to distribute said water through said hotel as said R. E. Rivers or lessee may desire from said pipes; the pipes to be put at a depth of three feet under the surface of the said streets, to be of iron, and of not more than — inches in diameter.

Be it ordained that the said pipe and all attachments thereto in said streets be arranged and placed under the supervision and approval of the city surveyor; the pavements and streets to be relaid to the satisfaction of the administrator of improvements and city surveyor.

Adopted by the council of the city of New Orleans November 15, 1882.

Yeas—Fitzpatrick, Fagan, Mealey, and Walshe.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

M. McNAMARA, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 27, '87.

A true copy of ordinance No. 8148, administration series,
323 adopted by the council of the city of New Orleans, approved by the mayor, and duly promulgated in the official journal.

[SEAL.] E. L. BOWER,
Chief Clerk.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *8th August*, 1884.

(No. 809, council series.)

Resolved, That permission be, and is hereby, granted to Mrs. W. W. Carre to lay a four-inch pipe from her premises, 342 Delord street, to the new basin; this privilege revocable at the pleasure of the council.

Adopted by the council of the city of New Orleans August 5, 1884.

M. McNAMARA,
Clerk of Council.

Approved August 8th, 1884.
D. M. KILPATRICK,
Mayor pro Tem.

A true copy.
E. L. BOWER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, '87.

A true copy of resolution No. 809, council series, adopted by the council, approved by the mayor *pro tem.*, and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

324 & 325

MAYORALTY OF NEW ORLEANS,
CITY HALL, 21*st Dec.*, 1882.

(No. 28, council series.)

Resolved, That permission be granted A. W. Moffett the right to lay a one and a half (1½) inch pipe from his mill to the new canal, for the purpose of supplying his boilers.

Adopted by the council of the city of New Orleans 19th December, 1882.

W. J. BEHAN, *Mayor.*

M. McNAMARA,
Clerk of Council.

A true copy.
C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 23, 1887.

A true copy of resolution No. 28, council series, adopted by the council, approved by the mayor, and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

326 *Defendant's Offerings.*

Testimony of J. P. Cotava and Peter Blaise. Filed June 25, 1887.

United States Circuit Court, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE SOUTHERN BREWING CO. } No. 11351.

Testimony taken on behalf of the defendant under the 67th rule, as amended, of courts of equity of the United States, before Edward R. Hunt, special examiner, duly appointed and qualified to take and return the depositions of witnesses in the above-entitled cause, at New Orleans, this 19 May, 1887.

Present: Alfred Goldthwaite, Esqr., solicitor for defendant; J. R. Beckwith, Esqr., solicitor for complainant.

Mr. Goldthwaite, solicitor for defendant, offers in evidence the ordinance of the city of New Orleans, No. 909, council series, to carry out the provisions of the act of the Legislature, No. 156 of the acts of 1884, providing for the future water supply from the New Orleans Water Works Company to the city of New Orleans and certain institutions, and regulating the use of water and the payment therefor, marked Exhibit "A," and the certificate con-
327 nected therewith of A. L. Bowers, chief clerk, dated July 30, 1886.

He also offers a certified copy of the contract between the city of New Orleans and the New Orleans Water Works Company, passed before Joseph D. Taylor, notary public, on October 3, 1884, marked Exhibit "B."

Also a certified copy of the contract and bond of the Southern Brewing Company made with the city of New Orleans, passed before Joseph D. Taylor, notary public, on May 7, 1884, said contract containing the ordinance No. 628, council series, adopted by the council of the city of New Orleans on March 18, 1884, and marked Exhibit "C."

J. B. COTAYA, a witness produced, sworn, and examined for defendant, says:

By Mr. GOLDTHWAITE:

Q. What is your occupation?
A. I am chief engineer of the Southern Brewing Co.
Q. How long have you occupied that position?
A. From the first start of the company.
Q. When was that?
A. That was in December, four years ago—September, 1882.
Q. What duties devolve upon you in your position of chief engineer with respect to the water supply of the brewery?

A. My chief duty is that of looking after the steam, to make beer, and to wash the barrels, etc.; to see that there is water supply there furnished by the engineers under my charge and
328 myself.

Q. From what source did you get the water when you sta-ted the brewery in September, 1882?

A. From the city water works.

Q. How did you find the supply of water from the city water works?

Mr. Beckwith, for complainant, objects to the inquiry as immaterial and irrelevant to any matter at issue.

A. The water supply at times was inadequate, or not half what we required.

Q. How long did you use the water supply from the water works company?

A. I don't know the length of time. I suppose fifteen or eighteen months. I don't know exactly; but 15 or 18 months from the beginning.

Q. Did that inadequacy of supply extend over the eighteen months?

A. Well, at the eighteen months we had to receive our supply of water from the river. Before that we could not get water enough at our well; we had to do all the pumping of our water because we could not get water enough from them. We had to pump day and night to get water for the brewery. At night and on Sundays at that time the water was very weak, having no head, and we had to take our water from the tank.

Q. Was there any reason for changing from the supply of water that you got from the city water works to getting the water through your own pipe from the river.

329 Mr. Beckwith objects as irrelevant and immaterial to any issue.

A. Yes, sir.

Q. What was the reason?

A. The reason was that we did not get water as we wanted it; second, that the water was very dirty at times by flushing out their plugs, etc. We had to pump our own water from the water works as we do now so as to get it up and store it for use when required.

Q. You say you pumped the water through your own pump?

A. Yes, sir; we had the water to run into the tank, then pump it up and store it for use when we wanted it.

Q. Was that machinery your own machinery?

A. Yes, sir.

Q. Could you get along without it?

A. No, sir; we could not. We would not have been able to do without it.

Q. What was the effect upon your supply of water from the water works Co. when a fire occurred?

A. Well, in one instance, I can say, that of the Solari fire, we did

not have half the supply that we generally had—not half. That is the only instance that I can remember.

Q. Was that a large fire?

A. Yes, sir; and it seemed that fire had connection with the plug that we were connected with.

Q. Was the difficulty such a difficulty as was likely to occur when another fire occurred?

330 A. Well, I suppose so. I don't know on what lines the pipe may lead. If the pipe might lead ahead of us and a fire to occur the engines ahead of us would draw the water clear from me, and then surely I would be out of water.

Q. To what extent would it interfere with the operations of the brewery?

A. Well, that is hard to say. It might cause a stoppage. If we were in the train of making a mash of beer and we did not get the water required we would lose the beer.

Q. How do you run that brewery, continuously, or do you stop off?

A. Continuously.

Q. Every day in the week?

A. Every day in the week, night and Sundays.

Q. Was there any difference in the supply of water furnished you on week days from what it was on Sundays?

A. Yes, sir.

Q. To what extent would the difference amount to?

A. Well, the difference might be about one-third less pressure. I never measured it, but that is approximate.

Q. Do you know what that is due to?

A. As much as I can understand, it is due to the machinery stopping at night and taking the water from the reservoir instead of from the column.

Q. What proportion did the supply of water furnished by the water works Co. bear to the supply which you needed when in operation to its full extent—that is, when the water works

331 Co. operated to its full extent?

A. Well, it done us because we made it do. We could use one-third more water at that time when the brewery was young, but now the same supply would not begin to help us out.

Q. With your present capacity for manufacturing beer and the supply of water which you need, how much of a disproportion would there be in the supply of water the water works Co. furnished you or could furnish you?

A. I do not properly understand your question.

Q. Is there any disproportion in the supply that they are able to furnish you and the supply you could use with your present facilities?

A. With the pipes that we had at that time, but with the pipes that they are now laying—I don't know. Our supply from their main at that time would not supply us one-half—that is, with the pipes that we had at that time.

Q. Are there any other pipes now?

A. Yes, sir; they have laid a much larger pipe. I don't believe we could get that pipe at that time.

Q. What is the machinery which you had to put in to aid you in getting water from the water-works mains?

A. We got a duplex three-by-two discharge pump. We were not directly connected with the section of the main. We took the water as it came out of their mains and then repump it.

Q. Did you have to store the water?

A. Yes, sir.

Q. Why did you store it?

332 A. Because when I wanted it I never could get one-fifth or one-sixth sometimes if I did not have it stored.

Q. Did you have to go to any expense to store it?

Mr. Beckwith objects.

A. Well, we went to the expense of a couple of cisterns. We had them for that?

Q. With your own pipe leading to the river did you have any difficulty in supplying yourself with all the water that was necessary?

A. No, sir.

Q. What is the character of the water that is furnished by the water works company?

A. The character of the river water is very dirty.

Q. Could you use it in the condition you get it from the water works company?

A. Yes, sir.

Q. For what purpose?

A. Well, we are not making steam directly with it now, but at that time we had made steam, making beer and washing the kegs. Now we are using $\frac{2}{3}$ of the well water that we have there for our steam purposes and condenser.

Q. Could you use the river water without a condenser?

A. Yes, sir.

Q. As it comes from the water-works mains?

A. Yes, sir; we use it.

Q. Did it have to undergo any process of distillation or

333 cooking or condensing?

A. No, sir; only we cooked it and got all the dirt out before the beer was made. That is the only time; but for the boilers or for the condensers we did not cook it; we used it as it was.

Q. You could not use it for making beer without first cooking it?

A. Well, we did that for the purpose of killing all the animal matter in the dirt.

Q. How about washing the bottles?

A. For washing the bottles we could not use it; we are using the artesian well water.

Q. Why could you not use it?

A. Because it leaves dirt in the bottles.

Q. In using the river water do you use it directly from the pipe or do you use it after being stored?

A. After being stored.

Q. What is the effect of storing water?

A. Well, first we have a supply on hand; and, second, it precipitates or allays a great deal of the dirt before it comes down to the main pipe. I pump it directly into the reservoir, and from there draw it off to the different compartments and distribute it.

Q. Could you use that water for the purpose that you do use it as it comes from the pipe without storing it?

A. Not very well, on account of the machinery being put
334 up for that purpose. For my part I could do it if I had larger machinery and another pipe, but we store it. We do not use the water constantly at a great rush.

Q. I speak with reference to the quality of the water, more.

A. Yes, sir; it could be used. We always boil it for making beer. Whether it is stored or not it has to be boiled for making beer.

Q. Was there any difference between the water which you got through your own pipe, when you had pipes, and the water which you got through the pipes of the water works company?

A. Not that I could see any. It may be a degree or so cooler in temperature in the summer time.

Q. How with reference to the color or muddiness of the water?

A. I don't think there is any difference between the two, only where the water works company flush their plugs two or three times a month, and if we are not aware of their flushing the plugs we get all the dirt down there. Sometimes we had to stop our machinery and wait a half an hour until the water got clear again.

Q. How often do you say this occurred?

A. I don't know exactly. I could say about twice a month or once. I don't know now. I did not pay particular attention to that.

Q. Do you say you had to stop the brewery?

A. No, sir; I just stopped the running supply from the water works. I stopped their *surface* pipe after being notified
335 about it by the men.

Q. What would be the effect if you did not stop the supply and having that muddy water discharged?

A. Well, if I happened to be short of water and had that water in my reservoir and pump it into the boilers I would have to have a great deal of dirt to clean and the tanks be full of mud.

Q. Have you ever considered that water with reference to its goodness or wholesomeness in the manufacture of beer? I mean pure water, as you get it from the river.

A. No, sir; I have not found any difference in them, any more than the artesian well that we have. It is far superior for my boilers than it is.

Q. Do you know of such things as fire-wells furnished by the water works Co. to the city of New Orleans?

A. I do.

Q. What is the effect upon the brewery of having these fire-wells opened?

A. Well, I never paid particular attention to them, only in one case, when the Solari fire was. I was on duty at that time. I was on duty at that time on the place. I was not far, as I am a fireman myself. I never felt it at the brewery. The water supply barely ran for half an hour or so. I noticed it. I was watching, myself, at that time.

Q. How far is that brewery from the river?

A. Well, the length of the pipe is 4,735 feet.

336 Q. The pipe which you laid to the river, does it run straight or not?

A. No, sir; there are nine elbows to it before it gets to the river.

Q. I mean through the streets of New Orleans.

A. No, sir; not direct, because it goes round the basin, coming round half a block and turning straight again.

Q. For what purpose do you use the water out of that?

A. Just for the brewery supply, making the beer and partly to feed my boilers. If my wells do not give me water I have to furnish my boilers and also my condenser.

Q. Do you furnish water to other people at all?

A. No, sir; except any one that comes along and wants a drink, but for our own building purposes we do.

Q. And I suppose your own domestic manufacturing purposes?

A. Yes, sir; our own manufacturing purposes.

Q. You say you have your own pumps and machinery to pump the water up into the upper story?

A. Yes, sir.

Q. Why do you have these pumps to pump the water into the upper story?

A. Well, when the water works supplied us with water we had to pump it up there because their water supply was not enough for us; and now we pump it up and keep it there when we get it from the river.

Q. Do you know anything about the machinery of the water works?

337 A. No, sir.

Q. Have you any information or knowledge which would enable you to say whether there is such machinery in the water works as would enable you to put the water in the upper stories of the brewery?

A. That is something I cannot answer. I don't know. I have not influence enough with the water works Co. to say that.

Q. Can you tell us at what cost the pump and machinery to put the water in the upper story of the brewery were placed in the brewery?

A. At what cost were the pipes and mains?

Q. No; your pumps not connected with the pipes; just your pumps that you have to connect with the mains of the water works Co.

A. You mean now?

Q. Yes.

A. The pumps that we have at present that are in the water works supply cost $1,100 or so.

Q. You have testified, I believe, that these pumps were essential to get the water up into the brewery?

A. Yes, sir.

Q. In using this river water in the manufacture of beer and in washing bottles you say that you have to cook it or distill it?

A. We cook the water to make the beer and use it for bottle washing.

338 Q. Suppose you had clear, pure water, would you have to cook it for the manufacture of beer?

A. I cannot answer that. The foreman may answer that. It is out of my branch.

Mr. Beckwith, solicitor for complainant, objected to all of the testimony of this witness relating to the supply of water, its quantity and quality, and to all the deposition—interrogatories and answers—relating to the sufficiency of the supply as immaterial and not relating to or tending to prove any issue in this case.

Cross-examined.

By Mr. BECKWITH:

Q. Just when, giving the best of your recollection, were the artesian wells sunk or driven on the premises of the Southern brewery?

A. When were they driven?

Q. Yes.

A. That is hard for me to tell exactly; about two years ago.

Q. Was it before or after the laying of the pipe to the river?

A. I believe it was after the laying of the pipe to the river.

Q. How many of these wells are there on the premises?

A. We had driven wells from the beginning of the brewery on the premises. We had seven of them, but they did not furnish us water enough at that time, and we sunk 2 four-hundred-feet wells.

339 Q. Were the 2 four-hundred-feet wells driven or sunk before you laid the pipe to the river or afterwards?

A. Well, really, I could not tell that exactly.

Q. What was the total daily capacity for producing water of the wells, aside from the 2 four-hundred-feet wells?

A. You mean the additional capacity that we required from the water works?

Q. I ask you the capacity of the wells themselves.

A. About seventy gallons a minute.

Q. Of all the wells or one of them?

A. Of the two large wells. The others were 25 gallons a minute, the seven of them.

Q. I ask you about the wells prior to the sinking of the two large wells.

A. Twenty-five gallons.

Q. What was the capacity of the two large wells?

A. The two large wells, about seventy gallons.
Q. An hour?
A. Yes, sir.
Q. The others were twenty-five gallons an hour?
A. The others were twenty-five gallons an hour.
Q. That was ninety-five gallons?
A. These wells were abandoned. After these seven were abandoned or given up we drove these two.
Q. How long were the seven wells used?
A. About one year.
340 Q. From the commencement of the brewery?
A. Yes, sir.
Q. Has the product of the water in the two large wells been constant?
—. ——.
Q. What is that used for?
A. We are using it now for our condensers—for cooling in the beer—and after the condensers I used it for my boilers.
Q. How high does that water flow above the top of the wells?
A. It flows about a foot and a half from the surface. We pump it. It does not flow very high by itself, and we pump it.
Q. Do the wells flow above the surface?
A. Yes, sir.
Q. Are your pumps attached to the wells?
A. Yes, sir.
Q. Do the pumps increase the yield of the natural flow?
A. Yes, sir.
Q. What is their yield by pumping?
A. Fifty or fifty-five gallons.
Q. To each well?
A. No, sir; both wells.
Q. I understood you to say the two wells were above that.
A. You said the increase. I said the increase was fifty-five. I had to pump seventy, and you asked me if it flowed over the surface, and I said yes, but not seventy gallons. They force seven or eight gallons by themselves.
Q. Then I understand you the total product of these two large wells, instead of being seventy gallons an hour, is about fifty?
341 A. No, sir; their product is between 65 and 70; we pump them to get 70 gallons.
Q. What size connection, if any, do you have with the mains of the water works company when you had the water from the water works company prior to laying your pipe?
A. We had a one inch and we had a two inch.
Q. Were both put in together?
A. I don't think they were; no, sir; the two inch was put in later.
Q. Do you know if any application was made to the water works Co. for an increased size of pipe service?
A. I do not.

Q. How high is your upper story from the ground floor; the story to which you say the water is pumped?

A. I suppose it is about sixty feet or sixty-five; between 60 and 65 feet.

Q. Part of the equipment of the brewery is a large tank for the purpose of storing water for distribution?

A. We have cistern tanks; four of them.

Q. That is part of the equipment of the brewery?

A. Yes, sir.

Q. And it is a necessary part?

A. Yes, sir.

Q. Did you ever have your pump, during the time that you took water from the water works Co. and prior to your laying the pipe, connected with the mains of the company?

342 A. No, sir.

Q. Why not?

A. I do not know. I suppose we were not allowed to. I surmise that. I am not positive.

Q. Did you ever feed your boilers from the mains?

A. No, sir.

Q. Never from the start?

A. No, sir; it was taken from our tanks.

Q. Do you not know it to be a fact that all the engines that are run in town have their feed-pumps connected directly with the mains?

A. There are a great many of them; yes, sir.

Q. It is the usual course?

A. That I don't know. I never worked any place else but at the Southern brewery, where we were connected with the water works before.

Q. The tank that you run the water into first from the water works was on the ground floor?

A. Yes, sir; a small tank on the lower floor.

Q. What is the size of that tank?

A. About four hundred gallons.

Q. It is the same tank that you used to pump into when you pumped from your own pipe?

A. No, sir; when I pumped from our own pipe I pumped directly from our reservoir upstairs.

Q. Using the same pumps?

A. No, sir; much larger pumps. We have two now.

343 Q. What was the size of the pump that you used for sending the water up to the upper story before you laid your own pipe?

A. Four by six before.

Q. Single?

A. Double—a duplex pump.

Q. Then the pump had two pump barrels, four by six?

A. Yes, sir; a duplex pump.

Q. What do you mean—with a piston motion of six inches?

A. Yes, sir; six-inch stroke and four inches diameter.

Q. Why was not that pump connected directly with the water-works mains?

A. I don't know.

Q. There was no trouble in doing it?

A. No, sir; none at all if I was allowed to do it.

Q. Do you suppose that your pump would have pumped the main dry?

A. No, sir.

Q. Did you assist or were you in any way connected with laying the pipe that was laid from your brewery to the river?

A. Yes, sir; i assisted.

Q. Do you know where it is laid?

A. Yes, sir.

Q. Through what streets does it reach the river?

A. It comes down Toulouse street as far as basin; then turns round the basin—a curve—and comes back to Toulouse street; down to Villere, up Villere to the center of the block, where
344 my pumps are located, and then into the building.

Q. Does it reach the river on a line of what would be a continuation of Toulouse street if it extended to the river?

A. Yes, sir.

Q. How far does it project into the river?

A. Well, about eighteen feet.

Q. It is how far from the surface at average water?

A. About eighteen feet. I don't remember exactly.

Q. About how far is it from the in-take end of *the* that pipe up to Custom-House street?

A. I cannot tell you that.

Q. Well, approximate it, as near as you can.

A. About 900 feet, I suppose.

Q. Custom-House street is upstream from your pipe?

A. Yes, sir.

Q. About how much further is it to the point where Common street would touch the river if extended?

A. About 1,500 feet, I suppose.

Q. It is about the upper line of Canal street?

A. Well, you are about as well versed about that as I am. I cannot tell you exactly about that.

Q. It is not as far from where Custom-House street is, if extended would strike the river, as it is from Custom-House street to your pipe?

A. I suppose it would be about the same distance.

Q. Now, were you aware when you laid that pipe that
345 through Custom-House street was a main discharging tons of the foeted matter from the custom-house and from the Charity Hospital?

A. No, sir; not prior to laying the pipe.

Q. Were you not aware that on the prolongation of Common street to the river is a route on which the sewage passes carrying along the foeted matter from the St. Charles Hotel and the City Hotel to reach the river?

A. No, sir.
Q. You did not know anything about it?
A. No, sir; not at that time.
Q. When did you find it out?
A. We found it out afterwards through talk.
Q. Both are a very short distance upstream from your pipe?
A. Yes, sir.
Q. Now, what is the total consumption or what was the total consumption of water in the Southern brewery *per diem* prior to the laying down of this pipe to the river and while you were taking water from the water works company?
A. That would be a very hard matter to tell. I suppose in the neighborhood of 50,000 gallons a day at that time.
Q. What was the average production or output of beer per day at that time?
A. I would have to refer to the books; I don't know anything about that.
Q. Have you no sort of an idea?
A. We would make about 100 barrels of beer a day in the
346 first beginning.
Q. How much had it run up to at the time you laid your pipe?
A. I cannot very well answer that question.
Q. Well, but you could say that the water works company could not furnish you water enough?
A. Yes, sir; I can say that.
Q. State why.
A. Because we were using more water than we could really get.
Q. Well, I come back again to ask you—you have fixed the size of the service pipe. I ask you now to tell me in illustration of that statement how much was your consumption of water per day for beer?
A. In making 100 barrels of beer I would use 6,000 gallons of water, but the water is used also for washing bottles, steam, etc.
Q. I ask you for the amount that went into the beer and you give me other details.
A. Well, that is a very hard thing to say. In making beer you have to allow all the water to make it. If you want to know how much water it would take to make that beer—boiling it—it would take from 5,000 to 6,000.
Q. I want you to tell me how much of the 100 barrels of the output of beer was water.
A. How much of it was water?
Q. Yes.
A. All of it is water.
347 Q. You then would have a hundred barrels of water a day?
A. Yes, sir.
Q. Incorporated in the beer. How many gallons does a barrel of beer hold?
A. Thirty-two gallons.

Q. Now, for what other purposes besides the water actually incorporated in the beer do you use water for in making that 100 barrels of beer?

A. Well, we had three boilers.

Q. You told us a short time ago that you took the water from the wells for them.

A. You are talking from the beginning of the brewery, if you please. I am giving you an illustration from the beginning of the brewery. These first seven wells we did not use for the boilers. They were for the condensers. It is only since we had the two large wells that we put it into the boilers from them.

Q. Now, will you tell us what your consumption of coal was for steam purposes during the day?

A. We were using over sixty barrels of coal a day.

Q. You used that for the evaporation of water alone?

A. Yes, sir; in the twenty-four hours.

Q. Your 100 barrels of beer relate to the 24-hour estimate?

A. Yes, sir.

Q. Then you evaporate the water that this amount of coal would evaporate?

348 A. Yes, sir.

Q. What else did you use?

A. We used water for our condensers in connection with these seven small wells that we had.

Q. Tell us what your condenser is.

A. The condenser is a large tank seven by fifteen feet and ten feet high, and as the ammonia passes through the pipes in the tank we cool it or liquify it.

Q. Then, if I understand you, the condensation relates to your cooling device?

A. Yes, sir; our ice-machine department.

Q. Is that a flow or spray?

A. A flow.

Q. Filling the tank full of water?

A. Yes, sir; filling it at the bottom, it overflows at the top.

Q. Pumped in?

A. From our reservoir.

Q. Through what size pipe?

A. Two inch at that time.

Q. With a two-inch overflow?

A. Yes, sir.

Q. Where did that water go—to waste?

A. To waste.

Q. Then there was a delivery of water through a vertical two-inch pipe from the main, 65 feet high?

A. Regulated through small valves—distributing valves.

349 Q. What was the flow per hour or minute through that refrigerating tank?

A. About 100 gallons a minute, or 90—from 90 to 100 gallons a minute.

Q. Now, we have your water consumption. No use was made of that overflow?

A. No, sir.

Q. None of it was ever pumped into the boilers?

A. We are doing it now, and have been doing it this latter part, but not at that time.

Q. Was there any reason why it should not be saved, instead of running waste?

A. No, sir; none at all.

Q. What other water consumption is there in the manufacture of 100 barrels of beer?

A. The number of kegs to be washed and the place to be kept clean.

Q. All that is 100 casks or barrels?

A. 500 packages—small packages—to be washed at that time.

Q. There would be by packages what it would take to fill 100 barrels?

A. Yes, sir.

Q. How were they washed?

A. With a spray nozzle inserted into the bung hole on the inside and a spray nozzle on the outside.

Q. That was connected with a rubber hose?

350 A. Yes, sir.

Q. Where was that pipe connected?

A. To the pipe leading from the upper reservoir.

Q. On the upper story?

A. Yes, sir.

Q What was the size of the pipe?

A. A two-inch pipe.

Q. Did you not take it out of the same pipe that went to the refrigerator?

A. No, sir; a branch off.

Q. What was the nozzle?

A. The nozzle has small rows of holes.

Q. That was screwed onto a half-inch pipe?

A. Yes, sir; a half-inch pipe.

Q. How much water was sprayed on a package?

A. Well, I presume about a gallon a package.

Q. That would be about 400 gallons used in washing?

A. Well, the outside takes about the same quantity, say about two and a half gallons to each package.

Q. What other consumption?

A. Well, there is a trough in the stable for the horses to drink.

Q. How many horses?

A. At that time I don't know exactly how many we had; about 30, I suppose—25 or 30 head.

Q. Do you know of any other consumption?

A. None except washing the place out once or twice a day,

351 and washing out the kettles.

Q. What do you estimate that consumption at?

A. At that time?

Q. Yes.

A. Well, I suppose about eight hundred gallons.

Q. Is the water allowed to run waste or the overflow in the trough or tank where you water your horses?

A. It is simply a skimming flow.

Q. Now, you say that you are very certain that a two-inch connection and a one-inch connection added to the water works would furnish you with water?

A. No, sir; not the way we are getting it, by its own pressure to flow.

Q. Do you know anything about the flow of water—its rate?

A. I am not so very well posted.

Q. State when and for how long the delivery was insufficient, setting aside extraneous occurrences like fires.

A. Well, during nights and Sundays.

Q. Did you have to run that duplex pump all the time?

A. It ran at night.

Q. Do you run it the 24 hours?

A. Well, not exactly the 24 hours; we stopped an hour or so when the tanks were full for packing or anything of that sort.

Q. How much of a proportion of the 24 hours did you run that pump?

A. About eighteen hours.

352 Q. At what number of strokes per minute?

A. Well, it varies a great deal.

Q. There must be an average; you ought to know the average that would supply your tanks.

A. Well, yes, sir; there is an average; the duplex, say about sixty (60).

Q. Then duplex pumps can be run as law as six?

A. Yes; six.

Q. I suppose the operations of your brewery have been suspended at times by reason of the want of water?

A. Yes, sir; we have been suspended, waiting for water to wash the kegs.

Q. How long have you been suspended?

A. 5, 10, 15, or 20 minutes.

Q. Was the whole beer-making stopped also?

A. No, sir.

Q. Do you know whether any application was made or representation of that sort was made to the water works—application for a larger service?

A. I don't know.

Q. Now, when you had connected your large pump with the new pipe to the river did you make any provision for the storage of water on the lower or ground floor?

A. No, sir.

Q. There was no occasion for it, I suppose?

A. No, sir.

353 Q. You forced directly into the tanks?

A. Yes, sir.

Q. The same tanks that you had prior to laying the pipes?
A. Yes, sir; with the addition of two.
Q. Two were added, I suppose, on account of the increased manufacture?
A. Yes, sir.
Q. Well, now, is it not indispensible in your instalments for making beer to have these tanks up there?
A. Yes, sir.
Q. Where did you take the water from for washing?
A. From these tanks.
Q. Where did you take the water from for the cattle or horses?
A. From the same tanks.
Q. You then used the system of storage tanks on the upper story of the brewery for distribution for all purposes?
A. Yes, sir.
Q. What sort of a pump did you connect on that pipe?
A. Our own pipe?
Q. Yes.
A. A Davidson plunger pump, eight by twelve.
Q. Double acting?
A. Yes, sir.
Q. How much of the time did you run that pump during the 24 hours?
A. Constantly.
354 Q. What did you do with the overflow, if any?
A. The overflow was allowed to waste.
Q. Through the waste pipe of the upper tanks?
A. Yes, sir.
Q. What overflow, if any, was that on an average?
A. I never paid particular attention to that.
Q. How many strokes a minute to the pump?
A. The pumps go about 25.
Q. That gave you a supply adequate to the increased output of brewery, did it?
A. Yes, sir.
Q. How much did your output increase over the hundred barrels during the period before you laid the pipe?
A. I suppose we use three times the quantity of water now than we did before—twice and a half more than we used before.
Q. How many thousand gallons would you put it at per day or per hour?
A. I suppose 150,000 gallons.
Q. What was the size of the pipe that you laid to the river?
A. Eight-inch.
Q. Your pump, of course, was a suction pump?
A. Yes, sir.
Q. With a lift of how much, on an average, at the river?
A. I never solved it; but in the winter time I drew as high as 25 inches of vacuum.
Q. That is, you had to get 25 inches before the water started?
355 A. Yes, sir; 24 or 25 is my hardest pull.

Q. That is pretty near as perfect a vacuum as you can make with a pump?

A. No, sir.

Q. How much can you make?

A. I have made 27 with that pump, but not from the river. 25 or 26 is all I can get from the river.

Q. Have you got a condensing engine?

A. No, sir.

Q. Is not a 27 vacuum a pretty good vacuum for a condensing engine?

A. Yes, sir.

Q. That is usually better than is carried?

A. Yes, sir. The best ones carry 26 or 27.

Q. That made a main lift of how high in the column of water?

A. 13½ or 14 feet.

Q. What connection have you got with the water-works mains now?

A. I have got no connection yet, but I will have a four-inch suction; I have got it through the ground—a four-inch suction direct with their main.

Q. Do you know what the leading main is out there—the size of it?

A. I don't know; I believe 8 inches. I would not say, for I never paid attention.

Q. What pump do you propose to put on it?

A. Our same water-works pump.

356 Q. There is always the same head on the main, is there not?

A. Yes, sir.

Q. I don't suppose you expect to get a vacuum to prime your pump with?

A. Not in the winter time.

Q. Nor in the summer?

A. No, sir. I do not need a vacuum on my pumps now.

Q. Has your pipe a siphon on?

A. Yes, sir. Our own is eight-inch.

Q. I know, but I was asking you if you need a vacuum to prime your pump when connected with the water works.

A. No, sir. I stated that.

Q. Then I suppose at the stage of water your present pipe has a siphon?

A. Yes, sir.

Q. Will you tell us what the diameter of the suction-pipe connection on your large pump is?

A. Eight-inch.

Q. Was the pump contrived or constructed for an eight-inch connection?

A. Yes, sir.

Q. Was it made specially for that purpose?

A. Well, I beg your pardon; I think it is six-inch. I have got a four-inch suction.

Q. I am asking you now according to how that pump is constructed. They are constructed according to rules? These
357 standard pumps have a rule for the eduction or suction and delivery?

A. Yes, sir.

Q. What is the connection at the pump in diameter? You, of course, reduce it from an eight-inch pipe.

A. Yes, sir; I think six or eight; I am not positive.

Q. What is your delivery?

A. Four from the delivery pipe; I am positive of that.

Q. Why has the connection not been made with the main of the water works company?

A. I don't know.

Q. How long has that pipe to the river been in use actively by the brewery?

A. About two years and a half.

Q. Can you state approximately when it was first put in?

A. No, sir.

Q. And you have drawn through it since the time it started the water that your pump would draw at the number of revolutions that you have given?

A. Sometimes faster and sometimes slower.

Q. What is your average, I ask you. I want to know it.

A. About twenty-five or thirty strokes.

Q. You mean the double stroke?

A. No, sir; the single, regular pump strokes.

Q. A well-regulated pump stroke to deliver water at both ends would be equal to the revolutions of a fly-wheel, if you had it?

358 A. About fifteen of them.

Q. Then you do not mean the return of the piston back to the point where it started from?

A. I count each one a stroke.

Q. That is, the plung- of the piston from one end to the other?

A. Yes, sir.

Q. That would be two strokes to an ordinary revolution?

A. Yes, sir.

Q. Then if you had your pump connected with a fly-wheel you think it would be about fifteen revolutions?

A. Yes, sir.

Q. How much in excess of the water required for use in the brewery, taking a month, would that speed of the pump give you?

A. At 30 revolutions?

Q. Yes.

A. That would have to be figured out. I could not tell you offhand.

Q. I do not want you to be definite about it, but you must, of course, have known about the amount of water.

A. We use on an average about 150,000 gallons a day, and it would be easy to see how much it would be by the month; I suppose one-tenth.

Q. 150,000 gallons of waste a day?

A. No, sir; not waste.

359 Q. I am asking you about the waste.

A. That is a hard thing to say. Some days there is no waste hardly at all and sometimes a great deal. It never has been watched close at all.

Q. When running that pump do you undertake to govern the pump by the amount of waste?

A. I can run the pump so there would be no waste.

Q. But I ask you what you saved in running the pump, or have you saved?

A. Yes, sir.

Q. How do you run that pump—by a separate battery of boilers?

A. No, sir.

Q. You take the steam from the general battery?

A. Yes, sir; the general battery—a manifold pipe. It branches off.

Q. What other pumps is that battery for?

A. Refining and cooking the water in making the beer.

Q. You cook the water, as you call it, by sending a jet of steam into it?

A. No, sir; we have two coils—radiations.

Q. Where di- you take the water from the coils—by a trap?

A. No, sir; not now.

Q. In a hot well?

A. No, sir; we have not any of them at all; we used to have a hot well at that time. Prior to using our pipes we had a hot

360 well. The pipes all went into the cistern, and I drew the water from there.

Q. What do you do now?

A. I waste it.

Q. Why did you not use that water for feed? It comes out with the same temperature in it.

A. Yes, sir; but we were always taking down things and building and could not attend to it.

Q. So you let it waste and used the cool water in the boilers?

A. No, sir; we have warm water there.

Q. I want to get at what machinery, aside from your pump, is propelled by your steam from your battery.

A. Well, I told you that—refining. The engines take steam and four or five pumps take steam. It takes steam to cook our water through the coils. We have coils to cook the beer with.

Q. Did you have engines to run the brewery?

A. Yes, sir; we have a small brewery engine.

Q. And your wells furnish water enough for your steam now?

A. Yes, sir; we are using the well water in connection with a small quantity of river water. I took my water from the condenser. When it is done carrying the ammonia off I feed from there.

Q. It is cooled when you send it into the refrigerator, is it not?

A. Yes, sir.

Q. Has there been any other fire or was there any other fire of

any magnitude on the line of the water-works mains leading
361 to the brewery except the Solari fire during the period that you were running the brewery, before laying the pipe?

A. I don't know of any.

Q. Do you you remember of any large fires in that vicinity since?

A. No, sir; I never noticed any since.

Q. Have you ever been present at any of the fires in this city?

A. Yes, sir; I think I have.

Q. Do you know the methods taken by the fire department to get water—whether they get it from the mains or just let it slush into the gutter?

A. Yes, sir; I know all about it. They sometimes take it from the mains and sometimes from the gutters. On a single plug they screw on their nozzle. Sometimes, if there are three or four engines in a line drawing the water from the same plug, the fourth engine does not get as much as the near one.

Q. Is it not a common thing at a fire of any considerable size for the fire department to knock off the plugs in the vicinity to get at the water and let the rest go?

A. Yes, sir.

Q. About what proportion of the water that is run into the gutters in such a case is caught up by the engines?

A. It is very hard to say. I cannot answer that. It is according to what part of the town it is.

Q. Is there one-quarter of it utilized?

A. I don't know. I cannot answer that. I don't know where the fire is or how many engines are there.

362 Q. When the water is from the gutter do you ever see one-quarter of it taken up?

A. Well, I have seen it all taken up and it was not a supply, and I have seen it more than a supply.

Re-examined.

By Mr. GOLDTHWAITE:

Q. With reference to the use of water by the fire department here, is it or not a fact that they are very free in the use of water in extinguishing fires?

A. Yes, sir; they have been in my day. I don't know what they do now.

Q. Have you had any practical experience?

A. Yes, sir; I am an exempt fireman.

Q. How long were you a fireman?

A. A fireman seventeen years.

Q. Now, you say that where three or four engines are drawing water from the same main you have known the first engine to get all the water?

A. Yes, sir; to get more water than the last one. We used to fight for the first place when I went to a fire, to get the best side. That is ten years ago.

Q. With reference to the tanks for storing the water being part

of the brewery, if there was a full supply of water to be gotten directly from the mains would the tanks for storing the water be necessary?

363 A. If the head would be sufficient to throw the water to the upper story, they would not.

Q. It would be a part of the brewery?

A. Yes, sir; if the water-works supply had head enough to force the water up to the upper story we could dispense with our tanks.

Q. Then, the tanks for storing water are not indispensible for a brewery, are they?

A. They are not indispensible if the water reaches there, as I just remarked, but they are indispensible now.

Q. Is there any necessity for having the tanks at the height of sixty feet in a brewery?

A. Yes, sir; they are sixty feet or more. I don't know the distance, but it is required to be up in the upper story, so as to have the water going in all directions; water is used on all the stories.

Q. The reason for putting them in the upper stories is that you want to use the water in the whole brewery, and you want to have a level for the water above where you use it?

A. Yes, sir; that is the idea.

Q. You say your connection with the main was through a two-inch pipe and a one-inch pipe?

Ans. I had no connection with the main whatever. It was an open water-works pipe with a two-inch valve on the end. Two of them branch outside together—the one-inch and the two-inch.

Q. With what main did you connect?

A. With the water-works main on Villeres street.

Q. Who ran the pipe out to the main?

364 A. The water works company.

Q. They supplied you with a two-inch pipe and a one-inch pipe?

A. Yes, sir.

Q. Was the water continually flowing through these pipes?

A. No, sir; about eighteen hours a day.

Q. Why are you not running the twenty-four hours?

A. Because we wanted the tank for other things. We had sometimes two hours to pump our beer. We had to put the beer in this tank, as we were short-handed at that time, starting the brewery.

Q. With the two-inch and the one-inch pipe, with reference to your present manufacture of beer, what would be the disproportion between the amount of water that you could get and the amount of water that you would need?

A. We would get about one-third of what we need.

Q. When these pipes were put there were they put there at the expense of the water works Co. or at the expense of the brewery? Who undertook to regulate the pipe there?

A. The water works company. I suppose we would have got a much larger pipe if we did. I don't suppose we could have got that, as they regulate that.

Q. Was there any complaint made to the water works company of the feebleness or the inadequacy of the supply of water?

A. I made all complaints to the head office of the brewery.

Q. Do you know of your own knowledge whether these complaints reached the water works company or not?

365 A. I don't know. I suppose they did, but I don't know.

Q. Who would have charge of that?

A. Our President, Mr. Blaise.

Q. Why did you put the artesian wells on the brewery?

A. To get clear, cool water for our ammonia condensers.

Q. Was there a matter of expense involved?

A. Yes, sir.

Q. How?

A. In fuel. The well water being cooler, we needed less condensing pressure, the river water being very warm in summer and the well water holding its temperature winter and summer alike, being 72 degrees Fah. in the summer.

Q. Was there any advantage in the clearness or purity of the artesian water over the river and well water?

A. In clearness it was, but in purity I don't know.

Q. Did the question of the supply of water have anything to do with the putting down of the artesian wells?

A. Yes, sir; it helped me considerably in my condensing department and in my boilers.

Q. But could you have gotten along without the artesian wells, with the supply of water furnished by the water works company?

A. I should not have these wells at that time. I don't know when these two wells were put down—whether it was after our water works were put down or after it was completed.

366 Recross-examined by Mr. BECKWITH:

Q. In running the brewery with a sixty-foot head, the brewery equipped with these tanks, you would heat the water, or cook it, as you call it, for the purpose of making the beer. That portion of the water that goes into the beer you would cut off in the main?

A. I would not.

Q. How could you heat it otherwise?

A. Because we have heating tanks for that purpose.

Q. Then the heating tanks on the floor overhead are necessary?

A. Yes, sir; we have tanks, too, for holding the beer and making mash; the beer kettle is a tank. But the water in the reservoir is not what we cook our beer in; that is called the hot-water tank.

Q. Did you ever see or hear of a brewery without distribution tanks on top?

A. I never paid particular attention to them.

Q. Did you ever know of a brewery without a distribution tank on the top?

A. I don't know. I never worked in any other brewery except this one.

Q. Do you not know that in a brewery it is necessary to distribute water in various directions at the same time?

A. Yes, sir.

Q. Is not a receiving tank rather necessary for that purpose?

367 A. Well, it would be a great help to have one, but if you had a great head of water it would run through the upper stories and the tank would be down here; but, as you say, it is preferable to have a distribution tank.

Q. Do you know of any way of distributing a uniform quantity of water in various directions from a stand-pipe or main sixty feet from any reservoir or ditch that the water had made?

A. By having a stand-pipe and head enough and pressure to force it high enough. You can have branches in every portion of the building you chose to.

Q. You do not mean to say that that could be done on a stand-pipe of only sixty feet pressure?

A. No, sir.

Q. How much more than sixty feet would you require to get a distributing pressure?

A. We would not require a very strong pressure at the top because we have the water there.

Q. But if the water was in a static condition of sixty feet the flow would not be a great deal?

A. Well, there is sixty feet, as we take it four feet below the tank. If I took it four feet below the column I would have it.

Q. Then you would want to have a 64-foot column?

A. Yes, sir.

Q. Would not that give it, then?

A. Well, I don't know. It may be so by theory.

368 Adjourned to Friday, May 20th, 1887, at 3 o'clock p. m. Signature to deposition waived.

NEW ORLEANS, *May 20th*, 1887.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE SOUTHERN BREWING CO.

Testimony resumed on behalf of the defendant this day at 3 o'clock p. m.

Present: Alfred Goldthwaite, Esqr., solicitor for defendant.
J. R. Beckwith, Esqr., solicitor for complainant.

Mr. Goldthwaite, for defendant, offers in evidence a copy of the contract between the city of New Orleans and the New Orleans Water Works Company, passed before Joseph D. Taylor, notary public, on Oct. 3, 1884, marked Exhibit "G."

Also a certified copy of extracts from the minutes of a special meeting of the board of directors of the New Orleans Water Works Co. held at the city of New Orleans, in the office of said company, on the 27th day of September, 1884, together with the certificate annexed thereto of J. D. Taylor, notary public, dated New Orleans, May 19, 1887, marked H.

369 Also a copy of a notice of the intention to apply to the General Assembly for an act or law to regulate the use by the people of municipalities, of political corporations, for public and other purposes, signed by the New Orleans Water Works Co. and published in the Daily States newspaper for a period of thirty days consecutively, beginning on the 30th April, 1884, together with the affidavit of S. S. Gregory, cashier of the Daily States newspaper, dated May 19, 1887, marked "J."

To the introduction of the document G complainant objected, as the same tends to establish or prove no issue or matter in controversy in this cause.

The same objection as to the document "H," purporting to be an extract from the minutes of the board of directors of the New Orleans Water Works Co.

As to document "J," that appears not to be an original nor an impress or print, nor does it appear to have been published, so far as any competent evidence connected with said document is concerned; and as to the affidavit annexed, that it is not in any respect competent proof of any of the matters set out in the affidavit or alleged in the offer of the document.

PETER BLAISE, a witness produced, sworn, and examined for defendant, says:

By Mr. GOLDTHWAITE:

Q. What is your occupation?

A. My occupation is a brewer.

370 Q. With what brewery are you connected?

A. The Southern brewery.

Q. What position do you hold?

A. President and superintendent.

Q. How long have you occupied these positions?

A. Four years.

Q. During your administration as president and superintendent have you used the water supplied by the New Orleans Water Works Co.?

A. Yes, sir; at the start.

Q. For how long?

A. About two years; not quite two years, but we had water for two years.

Q. During what years?

A. During 1883 and 1884.

Q. For what reason was the use of the water supplied by the water works Co. — by the board?

A. The time we had the trouble about the water I brought it before the board, and I told them that we had trouble with the water; some days we had no water and could not wash the barrels, and some days we had plenty of it.

Q. Was the water supply irregular?

A. Yes, sir.

Q. Was there any other complaint besides its irregularity?

Mr. Beckwith objects. All other objections to be reserved.

371 A. Yes, sir; there were.

Q. What other objections?

A. When they flushed the plugs the water was thick. They notified us, but we had to wait until afterwards to use it.

Q. How long would that suspension continue before you resumed the use of the water?

A. Well, it sometimes took ten, fifteen, or twenty minutes, and half an hour sometimes.

Q. How often did that occur?

A. I don't know; it may be once a month or twice a month, or three times. I don't know. I am sure it was every month, once at least.

Q. If you did not suspend the use of the water what would be the effect of their cleaning the pipes?

A. The effect of cleaning the pipes was to get the sand out of the pipes, and when they closed the plugs the water that came right after it was very muddy in our mains. Only, if we waited fifteen or twenty minutes or half an hour, the water would be all right again; it would settle in the pipe.

Q. Did you ever have any trouble with fires or from any other cause in the supply of water furnished to the brewery?

A. Yes, sir; so far as I got a report from my engineer. When the Solari fire was he reported it the next morning in the office.

Mr. Beckwith objects.

Q. What would be the effect of a large fire in New Orleans upon the supply of water furnished by the water works company?

372 A. Well, my opinion is, if they opened three or four plugs in our main where we are connected, we would have no water, for the engines put their nozzles in and suck the water out of the pipe. That has happened to me, out where I live, on Perdido street.

Q. Did you have any difficuliy with reference to the slowness of the water in running?

A. Yes, sir.

Q. What difficulty did you have?

A. We got some days, at nights, and on Sundays; the water sometimes would not have force to run up fifteen or twenty feet; sundays and in the night time.

Q. You experienced that difficulty at night also?

A. Yes, sir.

Q. Was it only occasional or was it every night?

A. Well, we did not use water every night.

Q. Whenever you did use it?

A. Yes, sir; sometimes.

Q. Did you feel it regularly on Sundays or only occasionally on Sundays?

A. Well, generally on Sunday we would. When we saw the water had no pressure we put tanks up on the fourth story and then con-

nected it from the upper story down to the lower story to get water up there.

Q. You say you put these tanks there because of the feeble supply you got from the New Orleans Water Works Co.?

373 A. Yes, sir.

Q. Would you have put the tanks there if you had an adequate supply?

A. No, sir; if the water was supplied up to the fourth-story; if it had the power to go there.

Q. Did you incur expense?

A. Yes, sir; we incurred expense.

Q. For what?

A. We bought four wooden tanks, what we call cisterns and the reservoirs.

Q. What supply of water do these reservoirs hold?

A. I cannot tell exactly, but about 6,000 gallons.

Q. Each one?

A. No, sir; the whole of them.

Q. And your brewery is supplied from these tanks?

A. Yes, sir.

Q. Are you familiar with other breweries?

A. Well, I have been in the West, but not in New Orleans, except my own.

Q. Are these tanks indispensible to breweries?

A. Yes, sir; if you make them in proper shape—iron tanks.

Q. Are they indispensible to hold water to furnish a brewery?

A. They are indispensible.

Q. Could you get along without them if you had an adequate supply of water?

A. Yes, sir; we can do without them if the water works is

374 strong enough to go up to the fourth story; if you have a well, then you need no tank; you have water in your tanks that you can boil and do everything with.

Q. Do you have to keep a distributing tank?

A. No, sir.

Q. Through what size pipes do you draw the water from the water works company?

A. I believe an inch and a half—from the main, you mean?

Q. Yes; from the main.

A. We have got one pipe an inch and a half and one an inch. I believe we had three connections. I think—I am not sure—we took the old supply from the old brewery that Mr. Merz had.

Q. Did you ever make any complaint of the insufficiency of the supply of water?

A. Yes, sir.

Q. Did you get any redress or a larger supply?

A. I made a verbal complaint at the office, and they told me that they could not connect the pipe nor make a larger pipe than the main. That is the answer they gave me. At the same time when they made connection that was with the old pipe. They told the men to take it up and make it all in one, and the old man said he

could not do it; they could not make a three or four inch connection. He said that would do first rate.

Q. Has your brewery increased in capacity since you used
375 the water supply of the water works Co.?

A. No, sir; not at the time we had the New Orleans Water Works water; only since we got our own water from the river.

Q. It has increased since that time?

A. Yes, sir.

Q. With the present capacity of the brewery what could be the ability of the present water works Co. to supply you with water if it was the same supply as you had before your capacity was increased?

A. I don't believe they could furnish it with the same connection that they had before.

Q. Was the flow of water strong or feeble, or what was the character of the supply or flow?

A. From the main through our hose?

Q. Yes.

A. Well, sometimes a very good flow and sometimes very low—what you call no power.

Q. It failed?

A. Yes, sir; it had no pressure.

Q. Now, in the manufacture of beer and the use of water in that brewery do you require a regular and constant supply?

A. Yes, sir; not regular; so long as we have got the reservoir we generally keep that on hand until we are in need and then let it run into the tank and into the hot tank for the boiler.

Q. How often do you use these tanks? How long would
376 it take you to exhaust a tank?

A. I cannot tell you that. I never bothered myself about that. The brewer and the chief engineer have got to attend to all that.

Mr. Beckwith, solicitor for complainant, objects to the foregoing questions, that they are leading, and, as to all the other questions and answers relating to the supply of water, they are all irrelevant and immaterial to any matter or question at issue in this case and not responsive to any issue therein.

Cross-examined.

By Mr. Beckwith:

Q. Do you have anything to do with the manufacture of beer in the brewery directly, or are your duties executive duties, as president of the company?

A. Yes, sir; I am only superintendent of the brewery.

Q. Superintendent of the brewery?

A. Yes, sir; president and superintendent.

Q. Are you superintendent of the general business of the brewery or of the manufacture carried on?

A. No, sir; the manufacture is for the foreman.

Q. You do not superintend the manufacture, but you superintend the affairs and the business of the company?

A. Yes, sir.

Q. How long have you occupied that position?

A. I have occupied that position since 1882.

Q. Since the brewery started?

377 A. Yes, sir; I was acting at the time the brewery started. Mr. Auer was sick when we started the brewery, so I had the whole business on my hands. He was not in the city; he was at the Abita Springs.

Q. Precisely when did you make your first brewing?

A. I believe it was in January, 1883. I am not sure.

Q. What had the building you now occupy been used for prior to that time?

A. As a brewery.

Q. By whom?

A. By Merz.

Q. Was it being operated as a brewery when your company acquired it?

A. Yes, sir; everything was there.

Q. Who made application to the water works Co. for water and water connection with the brewery?

A. I believe Mr. Auer himself and the board.

Q. But the board did not go in a body to the water works Co.?

A. No, sir; but they passed by.

Q. Who went to the water works company?

A. Myself and Mr. Hoppe.

Q. How long was that before you commenced brewing as the Southern Brewing Co.?

A. You mean when we made the application?

Q. Yes.

A. I could not tell you that.

378 Q. In what form was your application?

A. I cannot tell you that, neither.

Q. Was it in writing?

A. No, sir; I don't believe it was. I think it was verbal.

Q. Who made the representations as to the quantity of water that you wanted?

A. Well, I think Mr. Hoppe and myself.

Q. What representations did you make as to quantity?

A. I don't know, it is so long back. I forget that.

Q. Had you made any calculation as to the quantity of water that you wanted?

A. No, sir. I may have made it, but I don't know how much. At a new start you cannot make a calculation of the water you want. When we started we did not know whether it would be a success or a failure.

Q. But you had to make some calculation as to the amount of water you needed in order to designate the size of the connection, did you not?

A. No, sir; only in so far as I know, we spoke to Mr. Gardner;

when it was Merz' brewery. One, you said, was an inch. What was the other?

A. I don't know. I believe it is three.

Q. Is not one of the pipes a two-inch pipe?

A. I don't know.

Q. How much water did you use in the brewery, per day of 24 hours, up to the time that you laid down the pipe?

A. I cannot tell you that.

Q. Did you ever know?

383 A. No, sir; I never asked for it.

Q. Did you ever know whether the mains that you put down—these connections that you had made—were adequate to deliver the amount of water that you wanted?

A. Well, the only thing that I can say is that the complaints from the chief engineer and the foreman came to me, saying half the time they had no water or no force in the water. That is all I can state to you.

Q. How many times did they make that report?

A. I cannot say.

Q. How many times did you ever go to Mr. Gardner with a complaint?

A. I believe, once.

Q. You don't know when that was?

A. I think, maybe, twice. I don't know. It is so long ago.

Q. Well, now, how many barrels of beer were you making at this time, as the average daily product, before you laid down the pipe?

A. About 100—at the time that we laid down the pipe, say about 100.

Q. That would take 3,200 gallons of water a day for the beer alone?

A. Yes, sir.

Q. How much water did you use besides that?

A. Well, I cannot explain that.

Q. Did you use as much more water than the water you

384 put into the beer so as to make it 6,400 gallons?

A. No, sir; I don't believe we used that. I don't know.

Q. How was your pump connected with the water works at the time you did take water?

A. To take it through the hose?

Q. No; through the pump.

A. Which pump do you mean—the one we are using now or at the time when we had this?

Q. That pump that you used then.

A. Well, that pump would pump the water into the reservoirs, and it pumped the beer up.

Q. But I ask you how that pump was connected with your water supply.

A. It was connected to that pipe.

Q. Directly with the water-works pipe?

A. No, sir; we took it from our own pipe.

Q. I am now speaking of the time when you had no pipe of your own.

A. You mean the pipe that is connected in the brewery?

Q. Well, can you not answer me where you took the water from before you laid this main to the river—whether your pump was attached directly to your water-works connection or whether you let the water run into the tank and pumped it from the tank?

A. Yes, sir; we done that.

Q. Then the water that came to the premises through the
385 water works ran through this pipe into the tank, and your pump was connected with that tank, and you pumped it up into the upper story?

A. Yes, sir.

Q. You never had your pump connected directly with the main?

A. No, sir; never had.

Q. Why not?

A. Because we were not allowed.

Q. How do you know?

A. Because I know.

Q. Did you ever make application for it?

A. I believe I asked Mr. Gardner, and he said I could not connect with the main.

Q. Do you not know that $\frac{9}{10}$ of the water used in this city is from public connection with the main?

A. I cannot say.

Q. When did you apply to Mr. Gardner for that sort of information and get it?

A. We had the tank there and pumped it into the tank. The tank is five feet from the ground.

Q. When did you apply to Mr. Gardner for that sort of information and get it?

A. I cannot say.

Q. Are you certain Mr. Gardner ever told you that?

A. Well, I would like to have connection made with the water works on account that we want to use this main pipe.

386 Q. Are you certain that Mr. Gardner told you that?

A. Yes, sir; he told me that we could make no connection with the main.

Q. What do you mean by that; that you could not make a new connection with the main, or what?

A. That we could not connect our pump with the main. What we call the main is what comes inside the building.

Q. And are you certain that he told you that you could not?

A. Well, I am certain almost of that, because I would like to connect it.

Q. Tell us when and where you had that interview with Mr. Gardner.

A. I think I told him in the office.

Q. You will not be certain about that?

A. Well, so far as I know. I talked to him about it.

Q. Did you ever know of any other occasion of refusal to allow

connection of the feed-pump or other pump direct to the surface pipe leading to the main?

A. I am only telling you. I am not positive, but I am almost sure of it. I talked to him about it and he refused it.

Q. Tell me how you supplied your boilers at that time.

A. The boilers were supplied from the tank.

Q. Your feed-pump from the boilers was connected with the tank?

A. Yes, sir.

Q. Then there were times when you had that tank filled with beer?

A. No, sir; we cannot put beer in where there is dirty water.

387 Q. Do I understand you to say that the tank into which the water ran when it came from the service was never allowed to be empty and the beer run into it?

A. No, sir.

Q. Then your engineer is mistaken when he saus so, is he?

A. Well, I don't know. The tank stands alongside the boiler, like the safe there. The boilers stand alongside the tank there.

Q. When you started and had indifferent tank capacity that tank down by the delivery was never used to store the beer in temporarily?

A. No, sir.

Q. Are you certain of it?

A. No, sir; I would not do any dirty work like that. That would be dirty work.

Q. How dirty work?

A. Well, the tank is not clean.

Q. It has water?

A. Well, the steam and everything—the exhaust—goes from the upper part into it and warms it.

Q. You are talking about one tank and I about another. I now call your attention back. If you can keep it on the tank I would like you to do it. I understood you to say that before you laid down your pipe to the river, that before that connection, you had your water-works main, say the surface pipes, running into the tank in the building?

388 A. Yes, sir.

Q. And that your feed-pump or the pump by which you forced the water up to the upper story led into that tank, and you pumped the water from that tank, after it had flowed in there from the water works, up to the fourth story?

A. Yes, sir.

Q. That is the tank I refer to, and I ask you if when you first started this tank was not used at times to store the beer in.

A. Yes, sir.

Q. What did you do for water when that was done?

A. Well, when the water was pumped out and the beer was ready to be pumped up to the fourth story, in the cooling department, we had to clean the tank to let the beer go into the tank. After it was

started from that same tank we took the pump and pumped it up into the cooler.

Q. You pumped the beer from the same tank that you pumped the water when there was any beer in it?

A. Yes, sir.

Q. You used the same pump?

A. Yes, sir.

Q. How long was that day's supply of beer going through that tank and pump?

A. I don't know; I never noticed it.

Q. Can you not approximate it?

A. Maybe an hour or an hour and a half. I don't know.

389 Q. During that time you had to shut off your water supply?

A. Yes, sir; to bring the water upstairs.

Q. You had to shut off your water supply from the main?

A. Well, we shut the wells inside.

Q. Now, that brewery was so arranged that during the whole time you were transferring the beer up to the coolers you could not let the water from the main without taking the pump from the beer?

A. Yes, sir; we could not take it upstairs, but we could use it down-stairs in the lower story.

Q. What connection did you have to use it?

A. We had pipes lying all around the brewery, but half the time it did not run. That is the reason we had to put the tanks upstairs and bring the pipes on the lower floor.

Q. I understood you to say that when you were using this pump pumping the water upstairs you shut off the water pipe?

A. No, sir.

Q. You let it into the beer?

A. No, sir; we had a stop-cock and we opened that as we needed it.

Q. You had more uses for water than that tank. What other uses?

A. To wash barrels.

Q. What other uses did you have for it?

A. At that time we used it for the boilers.

Q. What brewery were you connected with in St. Louis?

A. I was not connected with any of them there, but in other places. When you go upstairs where the water tanks are

390 you open the cocks and the water runs in.

Q. What brewery or breweries have you been connected with other than the one you are now connected with?

A. My own.

Q. Where was that?

A. On Prieur street, between Gravier and Perdido.

Q. You have never been connected with any brewery out of this city?

A. No, sir.

Q. Do you know of any brewery without distribution tanks in the upper portion of it?

A. You mean in the West and in the North?

Q. Yes.

A. Well, I cannot say, on account of never seeing it, but I heard it from my foreman.

Q. Do you know of any water works in the United States that has got sixty feet of head or pressure on its mains?

A. I got it from the foreman. They say that there is no trouble in the water. They have it on every story where he has been.

Q. I ask you do you know of any water-works system in the United States having a 60-feet pressure?

A. I don't know. I cannot tell you that.

Q. When did you put these tanks in the upper story of your brewery?

A. The water tanks?

Q. Yes.

391 A. We put them right up after we got the water works.

Q. You put them up before you started brewing?

A. No, sir; we had to put them up. It was about at the same time when the stand-pipe was put in. Everybody said we were going to have the pipes that would go upstairs.

Q. Do you know when that stand-pipe was put up?

A. That was about the time we built the brewery.

Q. How high is the upper story of the brewery from the ground?

A. About 50 feet—4 stories; the lower story 20 feet; the second story 14 feet; the third story ten feet. The upper story I don't know anything about. That is the ceiling.

Q. Do you know anything of the size of the small pump that you used when you first started the brewery up to the time when you got the big pump for the main laid to the river?

A. I know the pump, but I cannot tell you the size. It is a double-acting pump.

Q. So you don't know and never did know how much water you needed in your operations? I mean in gallons.

A. No, sir.

Q. You never undertook to calculate it?

A. No, sir.

Q. So when you applied to the water works Co. for water it was guess-work what water you would want?

A. Yes, sir; it was guess-work, the business we were doing at that time.

Q. You knew the capacity of the brewery to brew if you
392 done a good business, did you not?

A. In any start we do not make a good business.

Q. You knew how much beer you could brew on the premises if you did a good business?

A. Yes, sir.

Q. How much did you estimate your capacity to brew in that brewery if you had sale for all you could make?

A. The first year I sold 30,000 barrels of beer.

Q. Then 30,000 barrels of beer was the full capacity of the brewery as it then was?

A. Yes, sir.

Q. What is its capacity now?

A. Well, when we get ready—I don't know when that will be—it might be a little more—may be about 60,000 barrels.

Q. That is, 60,000 barrels of 32 gallons each?

A. Yes, sir.

Q. When did you sink the driven wells in your brewery?

A. That was done two years ago in June coming.

Q. What wells did you sink then?

A. Four-inch pipes.

Q. How many of them?

A. Two of them.

Q. How deep?

A. 405 feet.

Q. How much water did they yield you?

A. 80 or 85.

393 Q. 85 gallons a minute?

A. Yes, sir; that is what he said to me.

Q. For what purpose did you use that water?

A. For cooling off the condenser.

Q. That is in your ammonia machine?

A. Yes, sir.

Q. What other purpose?

A. For the boiler.

Q. For what other purpose?

A. For the bottling department.

Q. Is the supply adequate for all these purposes?

A. Yes, sir; for the bottling department we have got tanks, and we fill them and let them stand there. The way they use it we do not use much water.

Q. What I ask you is, do these wells furnish you a supply adequate for steam purposes, for cooling your ammonia coils, and for washing your bottles?

A. So far they do.

Q. Have you estimated that they will continue to do so?

A. Well, they will give all the time the same condition of water.

Q. You have a supply from that source enough to furnish you steam necessary for your refrigeration in your ammonia apparatus and for washing bottles?

A. Yes, sir; the water in the condenser has to be used over again for the boilers. We do not waste that water; we do not waste a drop of it.

394 Q. Then you require no supply from the water works Co. for these three purposes?

A. Well, if anything happened which might take the supply from the water works the boilers could not be without water.

Q. But you compute the capacity of these driven wells to make them abundant as water works for these three purposes?

A. Yes, sir.

Q. Now, aside from making the beer and the water that goes actually into the beer for what purpose do you use the river water?

A. For making beer.

Q. That is not an answer to my question. You use, of course, the river water for the water that goes into the beer?

A. Yes, sir.

Q. Now, what else do you use the river water for?

A. You mean what we mix the water with.

Q. No; we will say that you make 100 barrels of beer a day?

A. Yes, sir.

Q. Now, that would take 3,200 gallons of river water to go into the beer?

A. Yes, sir.

Q. Now, what other purpose do you use the water for above these 3,200 gallons that go into the beer?

A. Washing the barrels and cleaning up.

Q. How much is used for that purpose?

A. I don't know.

395 Q. Can you not conjecture?

A. No, sir.

Q. How do you use the water; through a hose?

A. Yes, sir.

Q. What size hose?

A. Three-quarters.

Q. What size nozzle?

A. I don't know. I believe it is the same, the nozzle.

Q. You think it is a three-quarter nozzle?

A. Yes, sir.

Q. Now, is that running all the time?

A. No, sir.

Q. How much in the day are you using with this three-quarter nozzle on the barrels?

A. Well, some days it runs more and some days less.

Q. Can you make us an average?

A. Well, it runs about half the day, but we call it six hours steady in the day.

Q. Now, for the washing?

A. I mean for the washing and washing barrels.

Q. But for washing out the premises, how often do you wash them out?

A. It is done once a day.

Q. How long is the hose playing on that?

A. That goes very quick; when they do that they generally clean up to go home, about fifteen minutes.

Q. That is all the water you want to use on the premises?

396 A. Yes, sir; and for the stable.

Q. How many horses have you?

A. We have got sixty-five head of horses.

Q. You have got a trough there, I suppose?

A. Yes, sir.

Q. The water is running through that?

A. Yes, sir; slowly.

Q. A slight overflow?

A. Yes, sir; just a light overflow.

Q. Now, you are preparing a large number of beer tuns for storing beer, are you not?

A. Yes, sir.

Q. It is with a view to increase your capacity?

A. Yes, sir.

Q. How much do you expect to increase the capacity above its present capacity?

A. You mean when the new improvements are done?

Q. Yes.

A. It will be about 100,000 barrels a year.

Q. 100,000 barrels of beer against 10,000 now?

A. No, sir; we sell more than 10,000 barrels a year now. We sold 30,000 at that time. I want to sell 100,000 if I am able; if I cannot there will be no business.

Q. Before you began extending your works by new buildings and making new appliances, what was the maximum capacity of the brewery for making beer in a day of 24 hours?

397 A. We sold as high as 150 barrels a day.

Q. How much could you make in a day, not how much you could sell?

A. We could make 300 barrels a day now, at this time.

Q. That is, that was your capacity?

A. Not when we started.

Q. But that was your capacity when you began your extensions and improvements?

A. Yes, sir.

Q. And you expect to get the brewery to have a capacity of how much?

A. 60,000 barrels.

Q. That is, you expect to put in appliances so that you can make that?

A. Yes, sir.

Q. Now, I ask you to state, according to the best of your recollection, just exactly what conversation you had with the foreman of the labor gang, Mr. Forrest, at the brewery.

A. There was a conversation with him at the brewery. I told him to take the pipes off and make them all in one and he said he would not do it; and he said he did not have an order to do it.

Q. When you say "them pipes" what do you mean?

A. The pipes that were connected by the party that had the brewery before, named Merz. We had the same connection.

Q. That is, you wanted him to take out the inch connection?

A. Yes, sir; and put it all in one.

398 Q. How large a connection would that have made?

A. I don't know. I told him to put in about a two-inch and make it larger and give us a good force or power inside to raise the water in the premises, and he said that was sufficient; I would get plenty of water that way.

Q. You did not think about going to the superintendent of the water works about it?

A. I went to Mr. Gardner about the trouble—that the water did not run.

Q. But about this connection did you go to him?

A. No, sir; I did not go to him about that.

Re-examined.

By Mr. GOLDTHWAITE:

Q. Do you use the river water for bottling—washing?

A. No, sir.

Q. Why not?

A. Because it is too dirty.

Q. Where did you get the water from for that?

A. We got it from our artesian wells.

Q. How many artesian wells have you?

A. Two of them.

Q. What supply of water do you get from the artesian wells?

A. About 75 or 85 gallons a minute.

Q. Do you use that for any other purpose than the washing of bottles?

399 A. Yes, sir; we use it for steam and the cooling of the condensers.

Q. Why do you not use the river water for steam?

A. Well, it has too much dirt in it and would make too much dirt in the boilers.

Q. What is the effect of river water on boilers?

A. It will burn the boiler in two.

Q. If it was clear water would it affect the boilers that way?

A. No, sir.

Q. Why do you not use the river water in the condensers?

A. Well, the river water has too much sediment in it and settles in the pipe, and we cannot cool the ammonia off.

Q. Could you use it if it was clear?

A. Yes, sir.

Q. Now, about what proportion does the whole supply of water—the water used for bottle-washing, for the boilers and the condensers—bear to all the water which you get from the water works company?

A. I don't know.

Q. Could you conjecture or approximate whether it is one-third, a fourth, or a fifth?

A. We use all the water from the water works Co., 50,000 gallons a day.

Q. And how much from the artesian wells?

A. 75 or 80 gallons a minute.

Q. Is that constant?

A. Yes, sir.

400 Q. If you were to cook or purify that river water, could you use it for the purpose of bottling or in the boilers or the condensers?

A. Yes, sir; we could use it if it is cold in the condensers.

Q. Now, you say that the supply of water from the water works Co. is all that you want. Do I understand you to say that in answer to the question of Mr. Beckwith, that the supply of water that you get from the water works Co. was all that you wanted?

A. Yes, sir; at that time.

Q. But if they supplied you with that same quantity of water now or when your improvements are made which you have got from them, would it be an adequate supply?

A. I don't know.

Q. Did you get all the water that you could get from it?

A. I believe so; if nothing happened I believe we could get as much water as we needed.

Q. Was there any reason for not applying to the water works company in writing for an increased supply of water from that company?

A. Well, the only thing is that I went to Mr. Gardner at the office and said I would like to get more water, and he said, "Well, I think we will see about it," or something of that kind, but they never done it; they never made an improvement in the mains or gave us a different connection.

Q. Was that your reason for not applying in writing?

401 A. No, sir; I was not there. The chief engineer and foreman reported to me. They said, "We had no water this morning and we could not wash the barrels." Then the chief engineer came and told me that they had the plugs open, and they would have to wait until the plugs were closed.

Q. Why did you not apply in writing?

A. Well, I did not think it was necessary to do it on account that the water works Co. would accept it in that way and send a man to see about it.

Re-examined.

By Mr. BECKWITH:

Q. Do you understand that scale in the boiler coming — water comes from sediment or from salts in solution in the water?

A. From the sediment in the water.

Q. From the sediment alone?

A. Yes, sir.

Q. Then if the water is clear it never makes any scale?

A. Well, if it is lime water it will.

Q. Does not your well water give a scale?

A. No, sir; on the contrary, our boilers are like new.

Q. Then there is no salt in suspension?

A. Yes, sir; there is a little salt and iron in our well. I used to pay $2.50 each battery to clean them out, and now we never have to pay that.

Q. You are taking water now that has been condensed?

402 A. Yes, sir; it comes from the condensers.

Q. You are taking that water?

A. Yes, sir; we always did.

Q. You did not take it direct from the wells?

A. No, sir; the water is a little warm when it comes from the condenser.

Q. Is it not true that you sunk there wells and used the water from the wells in your ammonia apparatus because the water in the wells is cooler than the water from the river in summer time?

A. Yes, sir.

Q. Then it is not because the artesian water is cleaner, but because it is cooler, you use it?

A. Well, the dirt hurts it. When you put a quarter of an inch of mud on the top of a pipe and the water runs down you cannot cool the ammonia inside.

Q. Then these ice companies that use it constantly over their ice machines are very foolish?

A. No, sir; they are always looking for clear water.

Q. They have managed to use the river water for years, have they not?

A. Yes, sir; they have, but clear water is the best thing.

Signature waived.

Adjourned to Monday, May 23, 1887, at 11 o'clock a. m.

NEW ORLEANS, *May* 23, 1887.

403 NEW ORLEANS WATER WORKS CO. *vs.* SOUTHERN BREWING COMPANY.

Meeting convened as per adjournment.

Present: Alfred Goldthwaite, Esq., solicitor for defendant, and J. R. Beckwith, Esqr., solicitor for complainant.

And the following entry was made:

Mr. Beckwith, for the complainant, withdraws so much of the objection to Exhibit "J" and to the affidavit contained in said exhibit as relates to the form of the proof or to the affidavit being *ex parte*, or that the alleged notice is not an imprint, and reserves the right if it should appear on comparison that the copy with the notice as printed differs from the copy to establish the same by proof, and reserving the right to contradict by proof the statements contained in the affidavit of S. S. Gregory, but making no objection as to the form in which the testimony of Gregory is given.

Upon which an adjournment was made to Friday, May 27th, 1887, at 3 o'clock p. m.

Ordinance marked A, offered with defendant's testimony, copied at page 289 of the Transcript in the case of Water Works Co. *vs.* People's Ice Manufacturing Co., No. 11578.

Contract marked B, offered with defendant's testimony, copied at page 288 of the Transcript in the case of Water Works Co. *vs.* People's Ice Manufacturing Co., No. 11578.

404 EXHIBIT "C." Offered with Defendant's Testimony.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
Parish of Orleans, State of Louisiana.

Be it known that on this seventh day of the month of May, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth, before me, Joseph Dewey Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and official notary of the city of New Orleans, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Joseph Valsin Guillotte, mayor of the city of New Orleans, herein acting in his official capacity as mayor aforesaid, being herein and hereunto specially authorized and empowered by ordinance number 628, council series, adopted by the council of the city of New Orleans on the 18th day of March, A. D. 1884, a duly certified
405 copy of which ordinance is hereto annexed and made part hereof.

Also came and appeared Mr. Peter Blaise, president of the Southern Brewing Company, of this city, a corporation duly organized under the laws of this State by act of incorporation passed before me, notary, on the seventh day of July, A. D. 1882.

And the said Joseph Valsin Guillotte, mayor aforesaid, declared that, acting in his said capacity of mayor and for and on behalf of the city of New Orleans, by virtue of said authority in him vested by said ordinance No. 628, council series, he does by these presents grant and confirm unto the said Southern Brewing Company the right "to construct and maintain a water supply pipe from its brewery through Toulouse street to the Mississippi river" on condition that said Southern Brewing Company shall do all work connected therewith at its own cost, charge, and expense, including the replacing of the streets, stones, and paving under the direction and to the entire satisfaction of the city surveyor and the commissioner of public works of the city of New Orleans; and provided further that said Southern Brewing Company shall execute and sign a notarial contract, with good and solvent security, in the sum of five thousand (5,000) dollars, conditioned that it shall properly restore the streets and crossings through which said pipe may pass, a duly certified copy of which ordinance is hereto annexed for reference.

Said Peter Blaise, president, declared that, acting for and on behalf of said Southern Brewing Company, he accepts said ordinance No. 628, with its privileges and advantages and subject
406 to all its requirements and penalties, and hereby binds and obligates said Southern Brewing Company, when said pipe shall have been laid, to immediately and properly restore the streets, ways, and crossings through which said pipe may pass, all in conformity with the provisions of said ordinance No. 628.

And now personally came and appeared Mr. Hermann H. Bierhorst, a resident of this parish, who, with said Peter Blaise, declared that they do hereby guarantee to the city of New Orleans the faithful compliance by said Southern Brewing Company with all the foregoing requirements in relation to the restoring of the streets, ways, and crossings which may be disturbed in the laying of said pipe according to the requirements of said ordinance No. 628, and bind themselves in favor of the city of New Orleans each in the full sum of twenty-five hundred dollars, lawful money of the United States, payable on demand to the said mayor of the said city of New Orleans or his successors in office.

Now, the condition of the foregoing bond or obligation is such that if the said Southern Brewing Company shall immediately after such pipe shall have been laid properly restore the streets, ways, and crossings which may be disturbed in the laying of said pipe according to the requirements of said ordinance No. 628, council series, then the above-written bond or obligation shall be null and void and of no effect, but otherwise to be and remain in full force and virtue.

Thus done and passed in my office, in the city of New Orleans aforesaid, the day, month, and year first aforesaid, in the pres-
407 ence of Charles C. Rebentisch and Theodule Buisson, witnesses, residing in this parish, who have signed with the said parties and me, notary.

(Original signed) J. V. GUILLOTTE, *Mayor.*
PET. BLAISE, *Pres'd't.*
PET. BLAISE.
H. H. BIERHORST.
C. G. REBENTISCH.
TH. BUISSON.
J. D. TAYLOR, *Not. Pub.*

A true copy of the original.
New Orleans, May 12th, 1884.
[SEAL.] (Signed) J. D. TAYLOR, *Not. Pub.*

408 THE NEW ORLEANS WATER WORKS COMPANY *vs.* THE SOUTHERN BREWING COMPANY. } No. 11351.

Testimony taken on behalf of the defendant under the 67th rule of practice of the courts of equity of the United States before Edward R. Hunt, special examiner, duly appointed and qualified to take and return depositions in the above cause.

NEW ORLEANS, *December 3rd*, 1887.

Present: Alfred Goldthwaite, Esq., for the defendant.
J. R. Beckwith, Esq., for the complainant.

JAMES D. HOUSTON, recalled and examined on his return to the writ of *subpœna duces tecum.*

By Mr. GOLDTHWAITE:

Q. In compliance with the writ of *subpœna duces tecum* you have

brought with you the original receipt of the Daily States Publishing Company, of date May 5th, 1884, to the New Orleans Water Works Company?

A. Yes, sir; I have.

Q. The original receipt of Samuel P. Blanc for counsel services in drawing up the act of the General Assembly of Louisiana known as act No. 56 of the Pamphlet Acts of 1854, either from you, the said James D. Houston, individually, or the New Orleans Water Works Company?

A. No, sir; I did not, because he never received a cent for any
409 such employment. I brought the receipt for his fee in the case of The City of New Orleans *vs.* The New Orleans Water Works Company for taxes. Out of that suit grew his subsequent connection in defending a suit brought next by the committee of one hundred attacking the act, and it was considered all being one. There was no such receipt, either by me—that is, for money paid by me—or by the company, for any such services. *Br.* Blanc never made any charge for that specific service to me. Mr. Blanc has been my attorney since 1881, and it has been customary for me to go into his office and ask Mr. Blanc to draw up acts for me or do anything for me of that kind. Mr. Blanc seldom, if ever, presents me with a bill for any particular thing done. I have also, I might say, trespassed on Mr. Beckwith's time in that way. He has drawn up several acts for me, for which I never paid him. I have paid him in other cases, and I suppose he thought that this paid for the personal services he rendered me.

Q. Now, the *the* subpœna calls for the receipt given by the said James D. Houston to the New Orleans Water Works Co. for money paid to the said Samuel P. Blanc and reimbursed to the said James D. Houston by the New Orleans Water Works Co. for account of services rendered by the said Samuel P. Blanc in consulting about and drawing up act No. 56 of the Pamphlet Acts of the General Assembly of Louisiana for 1884 and the ordinance known as
410 909, council series, and the contract made by the city of New Orleans with the New Orleans Water Works Co., October 3rd, 1884, before Joseph D. Taylor, notary public.

A. My answer to that is that there is no such receipt. No such money was ever paid by me to Mr. Blanc, nor was I ever reimbursed any money by the New Orleans Water Works Co. Mr. Blanc's original engagement was with me as an individual for the purpose of defending the suit of The City of New Orleans *vs.* The Water Works Co. for taxes. After that case was lost I had Mr. Blanc to draw up that act. The act was passed. I then had Mr. Blanc to draw up the contract, and when the contract was drawn up and accepted by the company the company agreed to pay the original fee which I had agreed to pay Mr. Blanc for his services in the case of The City of New Orleans *vs.* The New Orleans Water Works Co. for taxes, which they did. After the settlement I recommended to the company the payment of a fee in addition to what I had contracted; that the case was one of considerable importance and was supposed to have been finally settled by the contract. The company paid

that fee, but in that fee there was no part or consideration for drawing up the act or for making the contract. I have no receipt for the moneys paid by me to Mr. Blanc and subsequently reimbursed to me by the company, as I never paid Mr. Blanc anything as a fee.

Q. Have you brought with you the ledger, day book, journal, receipt book, and minute book of the board of directors of
411 the New Orleans Water Works Co. for the year 1884?

A. I have the minute book, which is here; also the receipt book. These are the only books we brought. I did not notice that there was a call for anything else.

Q. Which you have heretofore stated. Do I understand that you make that as a return to the *su-pœna duces tecum* with which you were served in this case?

A. It is a return where I do not produce the things asked for.

Q. But, so far as it goes, you make it as a return?

A. Yes, sir. I make it as a return so far as the things produced are concerned.

Q. Will you turn to the receipt book and show me the receipt given by the Daily States Publishing Co. of May 5, 1884?

Witness produces the receipt referred to, contained in the receipt book under date May 5, 1884. It reads:

"NEW ORLEANS, *May* 5, 1884.

Received from N. O. Co. fourteen $\frac{25}{100}$ dollars, as per bill rendered.
DAILY STATES PUB. CO.,
$14 $\frac{25}{100}$. Per CARROLL."

$2 $\frac{25}{100}$ of this amount was for adv't'ng divid., payable April 10, 1884.
$12, notice of legislative act."

Q. Will you be good enough to turn me to the two receipts given by Mr. Blanc, one of May 28th, 1885, and the other of November 14th, 1884?

Witness produces the receipt of November 14th, 1884.

412 "N. O., *November* 14*th*, 1884.

Received from N. O. Water Works Co. $2,500.
$2,500. SAMUEL P. BLANC,
p. p. JOHN J. HANNON.

Witness produces the receipt dated New Orleans, May 28th, 1885:

Received of the N. O. Water Works Co. twenty-five hundred dollars, being balance of fee in matters of N. O. Water Works Co. *vs.* City, in relation to payment for water supply and tax claims, said payment to cover future services needed to complete the adjustment and settlement for claim for city taxes and payment for water supply in the past.

SAMUEL P. BLANC.

Q. Did these two payments to Mr. Blanc include the payment for services rendered by Mr. Blanc to you or to the water works Co., as you may view it, for drawing up the act No. 56 of the Pamphlet Acts of the General Assembly of Louisiana for 1884 and the ordinance known as No. 909 of council series and the contract made by the city of New Orleans with the New Orleans Water Works Co., October 3, 1884, before Joseph D. Taylor, notary public?

A. Not to my knowledge. Mr. Blanc could best answer whether he considered that a full payment—whether he included it or not.

Q. Did you ever pay Mr. Blanc for these special services, either as individual or as an officer of the New Orleans Water Works Company?

A. Never. As I said before, Mr. Blanc had been my attor-
413 ney since 1881, and he had drawn up quite a number of acts for me. He drew up a tax act. He drew up an assessment act. He has drawn up quite a number of acts, for which I never paid him on a bill specifically made out for them. I do pay Mr. Blanc for his services. He presents a bill to me and I pay it. Mr. Blanc never states in his bills for what specific services they are made out.

Q. Mr. Blanc drew up the act of 1884?

A. Yes, sir.

Q. And he drew up the ordinance No. 909, council series?

A. My impression is that he did.

Q. He drew up the contract between the city of New Orleans and the New Orleans Water Works Co. on that act 56 and the ordinance No. 909?

A. I don't know that he did that. Perhaps the notary public may have done that. Mr. Blanc may have had some supervision over it, but I am not positive of that.

Q. Do you know whether the New Orleans Water Works Co. ever paid Mr. Blanc for that ordinance 909, council series, or for that act—the act of October 3, 1884?

A. I am positive that they never have.

Q. Did Mr. Blanc have any compensation in addition to that $5,000, the receipts for which have been produced?

A. He did not; not in that connection he did not.

Q. Is Mr. Blanc a retained servant of the water works Co.?

A. He is not; not outside of certain tax cases.

414 Q. Then you have never paid for these services individually?

A. Not specified in a bill, but I paid him, Mr. Blanc, for all the services he rendered me.

Q. Has he ever rendered a bill for these special services to you?

A. No, sir; nor for any other special services.

Q. Has he ever rendered to the water works Co. any bill for these special services?

A. He never has.

Q. Did you have any connection with the drawing up of that contract of October 3, 1884?

A. Not to my recollection. I am positive I did not.

Q. Did you have anything to do with the ordinance No. 909 of council series?

A. I urged its passage.

Q. Did you have anything to do with drawing it up or the wording of it or directing it in any way?

A. I think I read it over with Mr. Blanc; that is my recollection.

Q. With reference to the little bill for $12, which was paid by the water works Co. May 5, 1884, to the Daily States Publishing Co., which has been produced, have you ever reimbursed that amount to the water works Co.?

A. I never have.

In response to the subpœna, the minute book of the board of directors having been produced, the solicitor for the defendant asks the witness, Mr. Houston, to turn to the minutes of the board
415 of directors which refer to any payment made to Mr. Blanc by the New Orleans Water Works Co., and in compliance with such request he turns to page 111, to the minutes of a called meeting dated November 11, 1884, and reads: "On motion of Mr. Houston, which was adopted, $2,500 was ordered to be paid to Mr. S. P. Blanc on account of his fee for legal services rendered in the State court, in the supreme court of the State, and in the city council—the case of the city ordinance No. 909, council series, dated September 25, 1884.

Q. Is there anything, so far as you are informed and believe, in the ledger, day book, or journal, which have not been produced in response to the *subpœna duces tecum*, which bear upon this cause or the matter inquired about?

A. Nothing.

The solicitor for the defendant accepts the statement of the witness, Mr. Houston, and dispenses with any further return for the ledger, the day book, and the journal.

Mr. Beckwith, the solicitor for the complainant, objects to each and every of the documents produced and the inquiries made of the witness for the reason that such matters relate to no legitimate issue or controversy in this cause.

Signature waived.

416 WILLIAM H. MOON, sworn on behalf of the defendant, says:

By Mr. GOLDTHWAITE:

Q. What is your present position in connection with the city government?

A. I am a member of the city council.

Q. How long have you been such?

A. For the past three years or over—since May 1, 1884.

Q. Do you remember what time in the month of May you entered upon your duties in the city council?

A. I do not; it was the second Tuesday in May, 1884.

Q. Was that prior to the meeting of the Legislature of Louisiana in 1884?

A. I don't know what time the Legislature met in 1884.

Mr. Goldthwaite suggesting that the constitution of the State fixes the time for the meeting of the Legislature on the second Monday of May, the witness states it was that time.

Q. Did the city council have any representative at the Legislature in the session of 1884 duly authorized to appear there on behalf of the city of New Orleans?

A. No- to my knowledge.

Q. Would you have known it, as a member of the city council, if there had been any one there to represent the city of New Orleans?

A. I would if any one had been authorized to do so by the action of the city council, and no other action would have been legal.

417 Q. Are you familiar with the act No. 56 of the General Assembly of Louisiana, contained in the Pamphlet Acts of 1884, relating to the water supply to be furnished to the city of New Orleans by the New Orleans Water Works Company?

A. Only in a general way. I have read it over.

Q. Do you know whether the city of New Orleans or the city council had anything to do with the passage of that act?

A. I do not.

Q. As a member of the city council, would you have known it if the city of New Orleans did have anything to do with the passage of that act?

A. I think I would; yes, sir.

Q. Have you any recollection of the passage of the ordinance known as No. 909 of the council series?

A. Is that in relation to the contract with the New Orleans Water Works Company?

Q. Yes, sir; it is.

A. Yes, sir; I have a recollection.

Q. At whose instance was that ordinance passed and adopted by the city council?

A. I think at the instance of the committee on public order. They had charge of the matter.

Q. Do you remember who composed the committee of public order at that time?

A. Joe Garidel was chairman, Mike Carroll, George H. Lord. (I will furnish the name.)

Q. Were you a member of that committee?

A. No, sir.

418 Q. Then di- you know who influenced or who solicited the passage of that ordinance other than the committee on public order?

A. Well, I was present at all the meetings held—I think at all the meetings held on this subject—and I took a very active part in the passage of that ordinance myself, thinking it was for the good of the city.

Q. You took a very active part?

A. Yes, sir; not as a member of the city council. I cannot say

that there was any influence outside of the wish of the council to get rid of a very ugly lawsuit and save the city some money. I know that these were the reasons that actuated me in it. I believe I suggested the price that was to be paid Mr. Blanc — was before the committee. I forget what his figures were, but they were wholly in excess of that paid by the gas company. I suggested that they should accept the same amount as paid for the lighting of the city, and on that basis it was fixed.

Q. Did the water works company have anything to do with the passage of that ordinance?

A. Not that I knew of.

Cross-examination.

By Mr. BECKWITH:

Q. Was there not some effort upon the part of the city to get some legislation on the subject at that session of the Legislature?

A. There might have been some, but my recollection does
419 not recall it. I think if there was anything in the council relative to a legislative enactment I would have known it.

Q. Do you know whether the mayor and the city attorney went up to Baton Rouge during the session of the Legislature?

A. In 1886 there were certain amendments to the city charter suggested in the council, and, although no regular committee authorized for that purpose went up, I think some persons in their individual capacity went up. But in 1884 I have no recollection of that kind.

Q. Do you mean to say that you don't know whether anybody went up there or not, whether the mayor or the city attorney or anybody else?

A. I have no recollection of that. The mayor may have gone up there, for all I know.

Q. In 1886 was there any action by the city council relative to going up?

A. There was a committee appointed in 1886. I was a member of the committee, but as a committee we did not go. We went as individual members of the city council.

Signature waived.

THOMAS H. RYAN, sworn and examined on behalf of the defendant, says:

By Mr. GOLDTHWAITE:

Q. Are you a member of the city council of the city of New Orleans?

420 —. Yes, sir; I am.

Q. How long have you been such member?

A. Since November, 1882. I have been twice elected.

Q. How long has the city of New Orleans existed under the present form of council and not bureau?

A. Since the second Tuesday in November, 1882.

Q. Do you know anything in relation to the act No. 56 of the General Assembly of the State of Louisiana, found in the Public Acts of 1884, relating to the supply of water to the city of New Orleans by the New Orleans Water Works Company?

A. All I know is that the act was discussed and considered in the council.

Q. When?

A. Some time during that year 1884.

Q. Was it before or after the passage?

A. After the passage.

Q. Do you know whether any such act was submitted to the city council before the Legislature met in May, 1884?

A. No such act was ever submitted, according to my recollection.

Q. If it had been submitted would you have known of it?

A. Certainly; it would have gone to my committee.

Q. What was your committee?

A. The Committee on water, levees, and drainage.

Q. Did the city council have anything to do with the securing of the passage of that act No. 56 of the acts of 1884?

A. The council as a body did not.

421 Q. Would you have known it if it had had anything to do with the passage of that act?

A. Certainly.

Q. Do you know anything about the ordinance No. 909 of the council series, and about it being offered in and passed by the city council of New Orleans?

A. Yes, sir: I remember it was a very interesting topic when it was up for discussion; everybody took part in it.

Q. Do you know at whose instance that ordinance was introduced and passed?

A. No, sir; I don't remember who introduced it. It may have been myself; I don't know; it is so long ago.

Q. Did you know at the time it was adopted who had drawn it up?

A. No, sir; I did not know that.

Q. Do you remember if the water works Co. had anything to do with securing its passage?

A. I do not.

Q. Did it go to your committee?

A. I don't think it did. It was considered to be more of a question of advisability or law than a water supply, and it was referred, as Mr. Moon said, to the committee on public order in the council.

Q. Do you know anything in relation to the contract made in October, 1884, to carry out the provisions of the ordinance 909, council series, and act No. 56 of the Public Acts of 1884?

A. Well, I suppose that I ought to say that I know something; but to be specific, I could not.

422 Q. What is the extent of your information?

A. My information is to the extent that the water works Co. and the city entered into what was considered to be a compro-

mise, in which the city got the best of it, in my estimation. I have no very clear idea about the details.

Q. Was that the general opinion in the council?

A. Yes, sir; it was or it would not have passed.

Q. That it was a compromise of the litigation?

A. I cannot say for the other members of the council, but that was my view of it, looking at it at that time.

Signature waived.

WILLIAM GOLDING, sworn and examined for the defendant, says:

By Mr. GOLDTHWAITE:

Q. Have you ever been connected with the New Orleans Water Works Company?

A. Yes, sir.

Q. How long were you connected with the company and when did your connection with the company commence?

A. Perhaps about four years, commencing, I think, in 1882. I am not positive about the time, but I think it is that.

Q. And lasted until about 1886?

423 A. Yes, sir.

Q. What was your position?

A. Consulting engineer.

Q. Did you have a general familiarity with the machinery and the drawing of water by the New Orleans Water Works Company?

A. Yes, sir; I had that. I knew all that was going on in that respect.

Q. Do you know whether any change has been made in their system of delivering water or the service of water?

A. There has been no change. Everything is carried on just the same as it was in 1860.

Q. What is and what was the method of storing water by the New Orleans Water Works Company?

A. They have four reservoirs or basins which hold sufficient water for what is known as the night supply. The engines commence the day at six o'clock in the morning and they run until six o'clock in the evening, maintaining a pressure equal to 60 feet head, so called, about 25 pounds to the square inch pressure. At six o'clock in the evening connection is opened with the basin, and the pressure then falls to the basin pressure, which is about 28 feet or perhaps 11 or 12 pounds to the square inch. The engines run under that pressure until about nine o'clock, and remain idle then from nine o'clock until about 3 o'clock in the morning, when they are again started to pump into the basin until 6 o'clock, when the next day's duty commences by closing the connection with the reservoirs.

424 Q. Then the storing of water in the reservoirs is purely for the night supply?

A. The night supply.

Q. Is there any difference in the supply of water which is furnished from the reservoirs and what is furnished directly from the river in point of clearness and wholesomeness?

A. No, sir; I think there can be very little difference. Some small quantity of sediment deposits in the basin during the night, which has to be cleaned out once or twice a year, but generally in the water, can hardly be appreciated.

Q. Has that condition of thing- always existed?

A. Since 1860; there has been no change.

Q. Do you know for what purpose that water in its natural state is fit for—I mean the river water?

A. Well, it furnishes the entire supply of a very large number of people; they have no other. It is most excellent water for machinery, and it is by some preferred for bathing. Of course, it is not a table water, unless it is allowed to subside or undergoes artificial clarification.

Q. How is it for laundry purposes?

A. If has to be clarified for laundry purposes.

Q. How is it for general cooking purposes?

A. I believe it is not used for cooking purposes, unless some time for settlement is allowed or is artificially clarified.

Q. How is it for the ordinary purposes for which you use water?

A. Well, as a matter of course, it is river water. It is not improved in passing through the works of the water works Co.
425 It is delivered in precisely the same condition of purity. About the qualities of river water it is more of a matter of opinion than anything else.

Cross-examination.

By Mr. BECKWITH:

Q. Do you know any reason why the character of the water taken into the pipe of the New Orleans Water Works should be any better or worse than the same water taken in at the head of St. Louis street? Or, rather, if the water works instead of being located where they are now were to be changed so as to take their water from the river at the head of St. Louis street, in your opinion, would you get a better or a worse supply of water?

A. I think that the point of the river from which the water is drawn at present would be preferable than lower down, for the reason that there is less liability of impurity from the city. Other than that, I do not see any difference.

Q. Do you know that the fires are extinguished in the works at night as they were when you were there, or are they banked and kept for the purpose of steam, in case it is necessary?

A. All the time since I have known the water works, since 1860, the fires were always kept banked at night. That was the purpose during the time I was connected with the works, so that they could start up the engines at a moment's notice, if required. I don't know of any departure from the mode of conducting the
426 works since I was connected with them from what it was in 1860. It has always been the same.

By Mr. GOLDTHWAITE:

Q. The night supply is drawn from the reservoirs?

A. Yes, sir.

Q. Is the effect of that to weaken or strengthen the distribution of water throughout the city?

A. It is likely to weaken it. The pressure, instead of being 24 or 25 pounds, may be 10 or 11 pounds pressure.

Q. Why is it that it is served from the reservoirs at night instead of being served directly from the river?

A. Well, it is an advantage to the company. It costs less to pump water 28 feet than 60 feet—that is, it allows six hours' time at night to make repairs, if anything has to be repaired. It does not lessen the time at night, because the men are there and have to be paid anyhow.

Q. What is the practice on Sunday?

A. On Sunday the practice is to continue what we call the basin pressure, and there is an intermission from pumping from 11 o'clock to 3 or 4 o'clock; in other words, the practice on Sunday is about the same as at night.

Q. What is the observation or what has been the observation when a large fire breaks out anywhere in the city of New Orleans and a large supply of water is necessary—what effect does it have upon persons who are served with water beyond the fire or in the neighborhood of the fire?

427 A. When there is a large draught of water in the vicinity of a fire it lessens the pressure in that immediate neighborhood. Points remote from there are not so much affected. So that if persons have a pipe leading into their premises only large enough to supply that pressure of 60 feet head and a large draught should be made on the distribution of that neighborhood they would not get a sufficient supply; the water would be liable, perhaps, to stop.

Q. Is there a remedy for that?

A. Well, the remedy would be in the distribution. The pumping facilities of the water works are ample, but the pipe in some neighborhoods is restricted. Of course it is not beyond remedy; it is merely a defect in the distribution.

Q. Has there been any change in the distribution or service of water of late years by the water works Co.?

A. Yes, sir; there have been some changes made, and they are always extending in one direction or another, making changes.

Q. But I mean changes for the better.

A. There are some changes of the pipes, but, from an engineering point of view, I don't think they are improvements.

Q. From what time do you make your estimate?

A. I think from 1879, 1880, 1881, and up to 1883, I think, they make some extensive changes. I think they have made very little changes since 1883, except in extending the pipes in some directions.

Signature waived.

428 NEW ORLEANS, LA., *January 5th*, 1888.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE SOUTHERN BREWING COMPANY. } No. 11351.

Testimony resumed on behalf of the defendant this day.

Present: Alfred Goldthwaite, Esq., for the defendant.
J. R. Beckwith, Esq., for the complainant.

JOSEPH GARIDEL, a witness produced, sworn, and examined for the defendant, says:

By Mr. GOLDTHWAITE:

Q. Were you a member of the city council in 1884?
A. Yes, sir.
Q. Were you a member of the city council in April, 1884?
A. No, sir.
Q. Or in May, 1884?
A. We must have come into office the first or second Monday of May, 1884, as far as I know.
Q. Did you have any knowledge of what is known as act No. 56 of the acts of the General Assembly of 1884, relating to the supply of water for the city of New Orleans, before the act was passed by the General Assembly?
A. No, sir; I knew nothing of it until it had been passed.
Q. Do you remember if the said act or a draft of the said
429 act was submitted to the council at any time before its passage by the General Assembly?
A. Never, to my knowledge.
Q. If it had been would you have a recollection of it?
A. I would have been one of the first to whom it would have been submitted, being on the committee of public order.
Q. What is the function of the committee of public order?
A. It is considered now as the legal committee of the council.
Q. When did you first have a knowledge of act No. 56 of the act of 1884?
A. The first time that I read that act No. 56 of the acts of 1884 was after having been appointed on a committee to consider what action might be taken to enable the city of New Orleans to collect the taxes due by the water works Co. I knew a great deal about the litigation between the city of New Orleans and the water works Co., because I heard of what had taken place in the court of which I was the minute clerk.
Q. When was that?
A. It must have been during the year 1883. It was under the administration of Charles S. Buck, as city attorney, when he attempted to collect the taxes due by the water works Co. The decision of the court of which I am the minute clerk was that the city of New Orleans had a right to collect its taxes, but at the same time she should be condemned to pay the water works Co. for the

year 1881, if I remember well, the sum of forty-one thousand and some hundred dollars.

Q. Are you still the minute clerk of that court?

430 A. Yes, sir.

Q. And have been ever since?

A. Yes, sir.

Q. Have you any knowledge of the ordinance of the city of New Orleans, known as No. 909 of the council series, referring to this act No. 56 of the acts of 1884?

A. Yes, sir.

Q. Do you know by whom that ordinance was introduced?

A. I really do not remember. It might have been by myself. I do not remember; but some member of the council. I do not think I offered it, but it was offered.

Q. When did you first have a knowledge of that ordinance?

A. The first night *if* was offered.

Q. Do you know if that ordinance was drawn up by any one; and, if so, by whom?

A. I cannot say by whom it was drawn up, because I might say half of the ordinances offered in the council are prepared by some friend of the council to whom they look for legal advice.

Q. Was there any one or more persons prompting that act through the council?

A. I saw persons advocating the passage of the ordinance before the committee of which I was a member.

Q. Who were these persons?

A. I saw Mr. Gardner, of the water works Co., and his attorneys; whether Mr. Butler or Mr. Blanc I do not know which to-day; they were advocating the ordinance before the committee, as is usually the case.

431 Q. Did you have anything to do with the contract before Joseph D. Taylor, notary public, made under that ordinance 909, council series?

A. I cannot answer that question positively, because I do not know if at that time Mr. Moon's ordinance requiring all ordinances to be laid upon the desks of the members was passed. As a rule, they were *paid* on the desks of the members, and they order- the contract to be made. *It if* was not done at that time I had nothing to do with the contract, because I could not have anything to do beyond that vote in the committee to which it would be sent.

Q. Had you anything to do at that time with the making of that contract?

A. I certainly knew that it followed the passage of the ordinance, as a matter of course.

Q. Do you know who drew up that contract?

A. The city notary public, of course, as far as I have knowledge goes. I know nothing beyond it. I take it for granted that he drew it. The contract, in fact, is nothing but the recital of the ordinance. Is not that so?

Q. Do you know, or is it a fact, that the water works Co. had anything to do with the passage of the ordinance No. 909?

A. Nothing beyond their appearance before the committee, and then, like every claimant before the city, advocating their cause.

Q. Do you know whether they were active with the members of the council in trying to secure its passage?

432 A. Certainly not with me.

Q. I say with the members of the council.

A. Well, I never saw them.

Q. Is there any mode or custom or routine pursued by the city when the city wants any legislation in its interest before the General Assembly as regards applying for legislation or entrusting it to any individual or committee?

A. Well, I know of only one attempt. At my solicitation once the council appointed a committee, to be styled the "legislative committee," to go to Baton Rouge and solicit the passage of certain acts. None of the members of that committee ever went to Baton Rouge. I know that some members of the council went there, but they went there as individuals and not as the representatives of the council.

Q. Do you know of any such instance where the city of New Orleans applied for special legislation since the new constitution?

A. Yes, sir; I myself introduced a resolution, which was unanimously passed by the council, asking the Legislature to pass certain measures.

Q. Did they give notice of it in the papers?

A. Yes, sir; it was published.

Q. Do you know of more than that one instance?

A. No, sir; because there was only one session of the Legislature held after we became cognizant of the affairs of the city. The Legislature set about the same time as we did after we went into office.

433 Q. Can you state whether that is the regular way?

A. That is the only way I know of, the way by which we proceeded.

Q. Was it by resolution offered in the council?

A. Yes, sir; I know we went further than that. I know we solicited a conference with the members of the Legislature; that was held in the council-room, all the members present.

Q. Was there any such method pursued by the city of New Orleans to get act No. 56 of the General Acts of 1884 passed?

A. Not to my knowledge.

The solicitor for the complainant objects to the question and the answers in this deposition for the reason that they relate to no matter or issue pertinent to the controversy in this action.

NEW ORLEANS, *January* 10, 1888.

NEW ORLEANS WATER WORKS CO.
vs.
SOUTHERN BREWING CO. } No. 11351.

Examination resumed for the defendant, both counsel present.

Dr. JOSEPH JONES, sworn and examined for the defendant, says:

By Mr. GOLDTHWAITE:

Q. Did you ever make a chemical examination of the water of the Mississippi river?

A. Yes, sir; I have.

Q. Did you ever make any report on the chemical examination that you made?

434 A. I stated the results. I do not know whether you would call it a report or not. Some of it was stated in one of my reports to the board of health.

Q. When the water of the Mississippi river is first drawn from the river what appearance does it present?

A. It depends somewhat on the stage of the river. In high water it always presents a muddy, tawny appearance. It may vary in appearance according to the height of the river. I have rarely ever seen it present any but this appearance.

Q. What is that due to?

A. It is due to finely divided mineral matter, silicate acid, or silicates, resulting from the abrasion of the continent by the various streams of water that divide the Mississippi as well as its banks.

Q. After standing what appearance does it present?

A. After standing a sufficient length of time it presents a moderate dull color, and then a milky appearance.

Q. As it is first drawn from the river is the water fit for use?

A. It is fit for extinguishing fires and for certain other purposes, as raising steam, but not for drinking purposes.

Q. How is it with regard to manufacturing purposes?

A. The great objection to it in manufacturing, so far as my knowledge extends, is the caking of boilers with mud or this finely divided mineral matter, which you might classify under the general term as finely divided sand. I have examined it under a

435 microscope and found it to contain minute fragments of silicate, and in manufacturers requiring filtered water it would not do; it would vitiate any project of that kind, in my opinion.

Q. What is the effect of distilling or cooking upon the water?

A. In distillation you would get the pure water from it, but the solid matter would be left in the still. It would form a kind of crust, which, I think, is one of the main causes of explosions on the Mississippi river, where they use unfiltered water. I do not say that this is one of the absolute causes, but it is one of the aggravating causes of these accidents.

Q. After the water is first drawn from the river and before it could be fit for use in manufacturing purposes or for drinking purposes is

or is it not necessary that the water should undergo filteration or purification?

A. Filteration or settlement. I have always advocated the building of large basins above Carrollton, where we would get the water free from filth and where the water could settle up there before using.

The solicitor for the complainant objected to the several questions and answers as being irrelevant and not pertinent to any matter or issue in this action.

Cross-examination.

By Mr. BECKWITH:

Q. Is there any material difference, in your opinion, in the character of the water that would be taken from the river at the site of the New Orleans water works and the water taken from the
436 river at where the prolongation of St. Louis street would reach the river?

A. As a matter of course, I should say there would be some difference, depending on the offal of the shipping and the discharge of the Charity Hospital and the hotels of late years, the *fœtal* matter.

Q. Where would you expect to get the best water?

A. At Carrollton, above the city, entirely.

Q. But as to the two localities that I speak of.

A. At the water-works site, because it is above the discharge of of the Charity Hospital and these other hotels and the shipping, of course.

By Mr. GOLDTHWAITE:

Q. With regard to the water at St. Louis street or anywhere below the discharge of the Charity Hospital and the hotels, if the water drawn from these localities were to be purified or filtered, would the discharge from the Charity Hospital or the hotels affect it materially?

A. I think it might under circumstances. I believe that science would be capable of filtering it properly, but in the event of a cholera epidemic and the discharges attendant upon the sickness of patients I think the Mississippi river would be a source of evil. I think that in previous time the cholera has spread here through the water. I do not say under the present water works, but, as far as I can look at the history of things, when they carried barrels of water round on the streets to sell.

437 Q. Was that from the river water generally or water from any locality?

A. I cannot say. New Orleans was a small place in 1832. It extended over a good portion of where the shippinng lies, which was the second and the 1st district. The third district had also its quota of filth.

By Mr. BECKWITH:

Q. Is it not likely that the discharge of night soils, foecal mat-

ter, and the general contents of privies would carry with it soluable salts of some kind that would become impregnant and congregate in solution in water?

A. Yes, sir; it carries the essential agents of disease, of microbes, which are very minute. We now look upon water analysis in order to determine the palatability or the drinking qualities of water, to microscopic examination rather than to chemical. Thus typhoid fever and cholera are supposed to be propogated by minute organisms.

Q. Would filteration as it is ordinarily carried on, by percolation, take out the soluable salts in solution and diffusion in water?

A. It would not take out the soluable salts to any extent, but it would depend somewhat upon the filteration—the character of it. It might not take out even these microbes, say, of cholera or typhoid fever, which we know to prevail very destructively in vaults,
438 villages where they use privies and wells.

Q. How would you filter water to get rid of the trace of uric acid?

A. Well, that is insoluable. It would take 15,000 parts cold water to dissolve it. I do not think anything would separate the ingredients of urine or uria.

Q. I speak of uric acid on account of its small solubility?

A. I think it would be easily separated, but it is insoluable in water.

Q. But I ask you with reference to the soluable portion—that which would dissolve?

A. Well, that would be difficult. The soluable part would only excrete about seven grains in 24 hours. It is one of the most insoluable substances known to man, and as soon as its temperature is changed it naturally precipitates.

439 *Extracts from the Minutes of the New Orleans Water Works Co., Marked "H." Offered with Defendant's Testimony.*

OFFICE OF NEW ORLEANS WATER WORKS CO.,
NEW ORLEANS, *Sept.* 27, 1884.

Extracts from minutes of a special meeting of the board of directors of the New Orleans Water Works Company held in the city of New Orleans, at the office of said company, on this 27th day of September, 1884.

Whereas ordinance No. 909, council series, adopted by the council of the city of New Orleans on September 23d, 1884, and approved by the mayor of said city on the 26th of September, 1884, has been promulgated and is now before this board for acceptance and to be a contract between the said New Orleans Water Works Company and the city of New Orleans during the term of the charter of the said company: Therefore—

1. Be it resolved—

That this the board of directors of said New Orleans Water Works

Company do hereby accept the terms, conditions, and provisions of said ordinance No. 909, council series, all and singular, and as adopted and approved and promulgated and as written in words and figures following, to wit:

Ordinance No. 909 copied *in extenso*. See page 293 of the Transcript of The New Orleans Water Works Company *versus* The People's Ice Manufacturing Company, No. 11578.

2d. Be it resolved further—

440 That said ordinance is hereby accepted, as above stated, to be and constitute a contract and agreement between said city of New Orleans and the New Orleans Water Works Company during the term and period of the charter of this said company, and the president of the said New Orleans Water Works Company be, and is hereby, authorized and directed to enter into and execute a notarial act of contract with the city of New Orleans, through its mayor, embodying said ordinance, and to carry out the same and these resolutions.

I certify the foregoing to be a true and correct copy and extract from the minutes of a meeting of the board of directors of the New Orleans Water Works Company held this day.

(Signed) L. H. GARDNER, *Sec'y.*

New Orleans, Sept. 27, 1884.

I certify the above and foregoing to be a true and correct copy of a resolution of the board of directors of the New Orleans Water Works Company, annexed to and made part of the contract entered into between the city of New Orleans and said New Orleans Water Works Company, passed before me, notary, on the 3d day of October, A. D. 1884.

New Orleans, May 19th, 1887.

[SEAL.] (Signed) J. D. TAYLOR, *Not. Pub.*

441 *Notice Marked "J." Offered with Defendant's Testimony.*

Notice is hereby given of the intention to apply to the General Assembly for an act or law to regulate the use by the people and municipalities or political corporation-, for public purposes or purposes of public institutions, of water pumped by or obtained from water works companies; to establish police supervision and rules relative thereto, and fix the conditions under which said water shall be taken, used, or supplied within the territorial limits of any municipality or corporation, whether supplied to the corporations or the people thereof.

N. O. WATER WORKS CO.

Before me, the undersigned authority, personally came and appeared Mr. S. S. Gregory, cashier of the Daily States, who, after being duly sworn, deposes and swears that the foregoing is a true copy of a notice published in the Daily States newspaper for a pe-

riod of thirty consecutive days, beginning on the 30th day of April, 1884; that the bill for publishing same was charged to and paid by the New Orleans Water Works Company of New Orleans on the 5th day of May, 1884, as appears by the books of this company.

S. S. GREGORY.

Subscribed and sworn to before me, a duly qualified notary public in and for the parish of Orleans, State of Louisiana, this 19th day of May, 1887.

[SEAL.] (Signed) J. D. TAYLOR, *Not. Pub.*

442 *Hearing and Submission.*

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *May 12th*, 1888.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.
Hon. Edward C. Billings, district judge.

NEW ORLEANS WATER WORKS COMPANY
vs.
MAGINNIS OIL AND SOAP WORKS. } No. 11565.

This cause came on this day to be heard before their honors the circuit and district judges upon the bill of complaint, the answer of the defendant, the replication thereto, and the evidence, proofs, and exhibits.

Present: J. R. Beckwith, Esq., for complainant.
William S. Benedict, for the defendant.

And was argued by counsel for the parties respectively and submitted, when the court took time to consider.

Certificate of Division of Opinion, Circuit and District Judges. Entered and Filed June 7, 1888.

443 United States Circuit Court, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
MAGINNIS OIL AND SOAP WORKS.

This cause came on for final hearing on bill, answer, and replication, and proofs at this April term of this court, A. D. 1888, the circuit judge and the district judge both sitting and holding said court and participating in said trial, and was submitted and taken under advisement by said judges. In considering what decree should or ought to be rendered herein the said judges differed and were opposed in opinion upon the following matter and questions:

1. Whether under the constitution and laws of the State of Louisiana the Legislature had power to grant to a corporation the exclu-

sive right to lay pipes and mains in the streets of the city of New Orleans for the purpose of bringing water from the Mississippi river either for sale or for individual use.

2. Whether in the acts of the Legislature of the State of Louisiana constituting the charter of the complainant corporation act No. 33 of the extra session of 1877, and the act amendatory thereof approved Feb'y 26, 1878, being act No. 43 of the Session Laws of 1878, the Legislature exercised such right and did grant the complainant corporation such exclusive right not only against all citizens, but
444 also against the city of New Orleans in so far as relates to its control over the streets and public ways and places in said city.

3. Whether the phrase "any person or persons contiguous to the river," contained in the 18th section of the said act No. 33 of the extra session of the Legislature for 1877, granting the complainant corporate existence and rights, should not be construed to refer to and mean a person in possession, ownership, or occupation of soil or land that forms the bank of the river, with riparian rights in the owner, with the intervention of no other title, property, or public highway between his title and the river.

4. The premises of the defendant are located as shown in the bill and on the map or plan made a part of the proof in this cause. Is the license granted by the council of the city of New Orleans to the defendant, as shown by the ordinance made part of the proof in this case, within the authority of said council under the complainant's charter and the laws of the State of Louisiana?

And in deliberation concerning what decree ought to be rendered in this cause the said judges of the district court, the Hon. Edward C. Billings, sitting with the said circuit judge, the Hon. Don A. Pardee, were opposed in opinion as to and concerning how said questions should be answered and determined— .

The said judge of the district court being of the opinion that the first, second, and third of said above set forth questions should be answered and determined in the affirmative, and that the said fourth question should be answered and determined in the negative,
445 and that decree in this cause should be made accordingly; but the said circuit judge was of the opinion that the said first, second, and third questions should be answered and determined in the negative and the said fourth question in the affirmative, and that there should be a decree accordingly and against the complainant; and the said circuit judge, being of the opinion aforesaid, thereupon made order and final decree herein dismissing the said complainant's bill of complaint, with costs, as appears by the record thereof; and in order that the truth and fact concerning such difference of opinion and wherein said judges were opposed may appear of record the said judges make this certificate thereof and order the same to be filed in this cause as a part of the record.

(Signed) DON A. PARDEE,
Circuit Judge.
EDWARD C. BILLINGS,
District Judge.

Affidavit of J. R. Beckwith. Filed June 8, 1888.

Circuit Court of the United States, Eastern District of Louisiana. In Equity.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE MAGINNIS OIL & SOAP WORKS.

446 EASTERN DISTRICT OF LOUISIANA:

J. R. Beckwith, being duly sworn, deposeth and saith that he is the attorney and solicitor for the complainant herein, and that he prepared the bill of complaint herein after a careful examination of all of the facts and matters mentioned; that he is well acquainted with the affairs of said company; that it was intended to aver in said bill and is averred in said bill herein that, aside from the actual amount of profits demanded for the infringement in the past, the damages and pecuniary loss that would result to the plaintiff as actual loss in the event that the defendant was not restrained from the acts complained of in the bill as illegal acts would far exceed the sum stated as due for past acts and wrongs in the infringement of the rights of complainant as a corporation with the construction of its rights as given by the Supreme Court of the United States, and that the amount involved in this action far exceeds the sum of five thousand dollars; that the main object and purpose of the bill and litigation was to obtain an injunction restraining the defendant from impairing the revenues of complainant by the acts complained of; that the decision and decree of the circuit judge in this cause actually strike out of existence rights, privileges, and property claimed by complainant far exceeding the sum of ten thousand dollars, and if his construction of the charter rights of complainant is to rest unreversed and undisturbed by or on appeal or review it will have
447 the effect to render the franchises supposed to have been granted to complainant unremunerative and unprofitable to those who paid more than value for said water works and property; and this deponent verily believes that if it shall become the settled law the said water works would become in all things unremunerative as property.

And further saith not.

(Signed) J. R. BECKWITH.

Subscribed and sworn before me June 8, 1888.

(Signed) H. J. CARTER,
Deputy Clerk United States Circuit Court,
Eastern District of Louisiana. [SEAL.]

Decree. Entered and Filed June 9, 1888.

U. S. Circuit Court. In Equity.

NEW ORLEANS WATER WORKS CO. *vs.* MAGINNIS OIL & SOAP WORKS. } No. 11565.

This cause having been submitted to the court upon the petition, answer, evidence, and exhibits on file, and the same having been duly considered and the law and the evidence being in favor of the defendants in said cause, after due consideration—

448 It is now hereby ordered and decreed by the court that said complainants' bill of complaint herein be dismissed with judgment for defendants with their costs.

June 9th, 1888.

(Signed) DON A. PARDEE, *Judge.*

Affidavit of L. H. Gardner. Filed June 11, 1888.

Circuit Court of the United States, Eastern District of Louisiana. In Equity.

NEW ORLEANS WATER WORKS COMPANY *vs.* MAGINNIS OIL & SOAP WORKS. } No. 11565.

EASTERN DISTRICT OF LOUISIANA, *ss:*

L. H. Gardner, being first duly sworn, deposeth and saith that for more than four years now last past he has been an officer of the said complainant company, most of the time its superintendent, and is well acquainted with its affairs; that the bill in this cause was filed for the purpose of enforcing what the officers and directors of

449 said company believed to be a true construction of the charter rights of the company by the Supreme Court of the United States in the case of Water Works Co. *vs.* Rivers; that the account for wrongs done in the past was secondary as a purpose in said litigation; that the doctrine laid down as law by the circuit judge, if correct as allowed to stand unreversed, strikes down a right claimed by this company of a value not only far exceeding five thousand dollars, but destroying to a serious extent the consideration for which the holders of the shares of the capital stock of the complainant company exchanged city bonds for said water works, and that he verily believes that had it been supposed that the city of New Orleans would have been permitted by the courts to commit active breach of its warranty in the sale of the water works to said complainant by granting the right to large consumers to lay pipes and mains, as in the case of the defendant, the city never would have sold the works to this company or any other person or corporation.

That if the right to furnish water to and on the premises occupied by

the defendant alone was involved and the amount claimed by complainant as compensation for past infringement of its rights is not considered, the amount involved in this action far exceeds the sum of five thousand dollars for and during the unexpired term of the company's charter, and that if the owner of said premises was to apply to the complainant company for a license to *sow* said pipe and pump a supply of water from the Mississippi river for said premises for the remaining time leased by the charter of complainant said com-
450 plainant would demand a sum far exceeding the sum of five thousand dollars for such revenue, and abandonment of right by the complainant as to said premises would be and is worth more than that sum of money.

(Signed) L. H. GARDNER.

Sworn and subscribed to before me this 11 day of June, 1888.

(Signed) WM. GRANT,
U. S. Com'r.

Motion and Order for Appeal. Entered and Filed June 11, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE MAGINNIS OIL & SOAP WORKS. } No. 11565.

On motion of J. R. Beckwith, solicitor for complainant herein, made in open court at this April term of said court, A. D. 1888—

It is ordered that the said complainant be, and is hereby, allowed and granted an appeal from the final decree in this cause made and entered at the present term of this court, as appears of record in this court, to the Supreme Court of the United States, at
451 Washington, returnable in said Supreme Court on the first day of the next regular term of said court, to be held in October next, and that upon the said complainant giving bond and surety in the sum of five thousand dollars the said appeal operate — a supersedeas.

Bond for Appeal. Filed June 11, 1888.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The New Orleans Water Works Company, as principal, and Albert Baldwin, of the city of New Orleans, as surety, are held and firmly bound, jointly and severally, unto The Maginnis Oil and Soap Works in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Maginnis Oil & Soap Works, its successors, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 11th day of June, in the year of our Lord eighteen hundred and eighty-eight.

Whereas the said New Orleans Water Works Company having heretofore, to wit, on the 11th day of June, 1888, taken an appeal to the Supreme Court of the United States from and to re-
452 verse the decree rendered on the 9th day of June, 1888, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of The New Orleans Water Works Company, plaintiff, against The Maginnis Oil & Soap Works, defendant, No. 11565 of the docket hereof:

Now, the condition of the above obligation is that if the above-bounden New Orleans Water Works Company shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE NEW ORLEANS WATER WORKS COMPANY,
By J. R. BECKWITH, *Solicitor.* [L. S.]
A. BALDWIN. [L. S.]

Signed, sealed, and delivered in the presence of—
J. R. BECKWITH.

Order in Minutes of Approval of Appeal Bond. Entered and Filed June 11, 1888.

And the said complainant herein having produced to the court in open court an appeal bond in this cause in the sum of five hundred dollars, with A. Baldwin as surety, on motion of J. R. Beckwith, solicitor for complainant and appellant, it is ordered that the said bond be approved and filed, and that said appeal herein stand perfected.

453 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 452 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of The New Orleans Water Works Company *vs.* Maginnis Oil & Soap Works, No. 11565 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31 day of July, A. D. 188–.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 31 day of July, A. D. 1888.

EDWARD C. BILLINGS, *Judge.*

454 *Opinions of Circuit and District Judges. Filed June* 7, 1888.

U. S. Circuit Court, Eastern District of Louisiana.

NEW ORLEANS WATER WORKS CO.
vs.
SOUTHERN BREWING CO.

SAME
vs.
PEOPLE'S ICE CO.

SAME
vs.
MCGINNIS OIL & SOAP WORKS.

Before the circuit & district judges. In equity.

PARDEE, *Judge*:

Assuming that the questions arising under the constitution, upon which our jurisdiction rests, are to be decided in favor of the complainant, there remains the question of construction of complainant's charter and the general laws of Louisiana with reference to the right of the city of New Orleans, through its council, to grant licenses or permits to the defendants to lay pipes in and across the public
455 streets to their respective establishments for the sole purpose of supplying themselves respectively with water from the Mississippi river.

In the case of New Orleans Water Works *vs.* Crescent Sugar Refining Co. and The City of New Orleans, 35 Ann., 1111, this question of the authority of the city of New Orleans under the complainant's charter and the laws of the State was presented to the supreme court of the State of Louisiana and was decided in favor of the right.

It is true that in the case the refining company, among other defences to the suit, set up that it was a contiguous person to the Mississippi river and therefore within the letter of the proviso in the 18th section of complainant's charter, but the court wholly ignored the contiguity defence, and based its judgment wholly upon the general law of the State and upon the construction and effect of the charter from the Legislature to the water works company and of the

license from the city council to the refining company and in no degree upon the constitution or any law of the State subsequent to the water-works charter.

The case was carried by writ of error to the Supreme Court of the United States and there dismissed for want of jurisdiction, the court deciding that no Federal question was involved, the right of the city of New Orleans to grant the license complained of being wholly a question to be decided under Louisiana law.

See Sup. Ct. Rep., vol. 8, No. 22, p. 741.

The decision of the supreme court of the State was rendered in 1884.

456 In 1885 the precise question was before the Supreme Court of the United States in the case of New Orleans Water Works *vs.* Rivers, and was then decided in favor of the water works company, the court holding that an exclusive franchise granted to supply water to the inhabitants of a municipality by means of pipes and mains laid through the public streets is violated by a grant to an individual in the municipality of the right to supply his premises with water by means of pipes so laid.

Although the case of The Water Works Co. *vs.* Refining Co. was then pending on writ of error, and the counsel for the refining company submitted a brief in the Rivers case, in the decision no reference whatever is made to the decision of the supreme court of Louisiana upon this very question, conceded to be not a Federal question, but one wholly depending upon local Louisiana law.

See Water Works Co. *vs.* Rivers, 115 U. S., 674.

The question is thus squarely presented whether, in a matter involving solely Louisiana law, where no property rights under former decisions are involved, this court should follow the decision of the highest court of the State or the decision of the Supreme Court of the United States.

This same question was presented to the Supreme Court of the United States in the case of Fairfield *vs.* County of Gallatin, 100 U. S., p. 47.

In 1874, in the case of Railroad Co. *vs.* Pinkney, 74 Ill., 277, the supreme court of the State of Illinois gave a certain construction to a provision of the constitution of the State. About one year afterwards, in Town of Concord *vs.* Portsmouth, 92 U. S., 625,
457 the same constitutional provision came before the Supreme Court of the United States and received a contrary construction, the case of Railroad *vs.* Pinkney not being called *in* the attention of the court.

In Fairfield *vs.* County of Gallatin, *supra*, the same question was again brought before the Supreme Court of the United States, the defendant in error relying upon and the court below having followed Concord *vs.* Portsmouth, *supra*, and it was then held, reversing the circuit court and citing Polk's Lessee *vs.* Wendell, 9 Cranch, 87; Nesmith *vs.* Sheldon, 7 How., 812; Walker *vs.* State Harbor Commissioners, 17 Wall., 648; Elmendorf *vs.* Taylor, 10 Wheat., 152;

Green *vs.* Neal's Lessee, 6 Pet., 291; Leffingwell *vs.* Warren, 2 Black, 599; Sumner *vs.* Hicks, 2d, 532; Olcott *vs.* Supervisors, 16 Wall., 678, and State Railroad Tax Cases, 92 U. S., 575, that it is the general rule of decision to follow and adopt the decisions of the State courts in the construction of their own constitution and statutes when that construction has been settled by the decisions of its highest tribunal, and that this rule of decision is to be followed even where the Supreme Court of the United States has given a different construction to the State law, provided no rights are affected which have been acquired under their former decisions.

See also Suydam *vs.* Williamson, 24 How., 427.

To the above general rule there are exceptions—*i. e.*, where rights of property have been acquired under former decisions of either the State or Federal courts, where on the same transac-
458 tions the Federal court has first passed and the decisions of the State court relied upon do not meet the independent judgment of the Supreme Court of the United States, and when general questions of commercial law are involved.

See Pease *vs.* Peck, 18 Howard, 595.
Morgan *vs.* Curtenius, 20 Howard, 1.
Thompson *vs.* Perrine, 103 U. S., 806.
Douglass *vs.* County of Pike, 101 U. S., 677.
Oates *vs.* Nat. Bank, 100 U. S., 239.
Burgess *vs.* Seligman, 107 U. S., 20.

In Pease *vs.* Peck and in the last-cited case it is intimated that the general rule should lose some of its rigidity in cases involving controversies between citizens of different States.

In the cases now under consideration the parties complainant and defendant are corporations deriving life entirely from the laws of Louisiana, and these causes are apparently brought in this court as arising under the Constitution of the United States, when the real question in issue is one not Federal, but arising solely in relation to the proper construction to be given to Louisiana laws, and where, if it is not the sole object, the main purpose is to escape the construction given by the supreme court of Louisiana to the laws of the State.

Heretofore in these cases, on motions for injunctions *pendente lite*, where the main question argued was whether the complainant's monopoly had been extinguished by the fact that the complainant had procured and accepted remedial legislation under the present constitution of the State (see Const. 1879, arts. 234 and 258),
459 and considering that under the charter to complainant the city was limited in granting permits to persons actually contiguous to the river, and that such contiguity was a question for the court to determine, we have followed the Rivers case and granted temporary injunctions in those cases where more than public ground separated the parties from the river.

But now it seems that in the courts the question of contiguity cuts no particular figure, but is decided by the city council when they grant or refuse a permit. In the Rivers case, as interpreted by the

supreme court in Water Works Co. *vs.* Refining Co., *supra*, it was not in issue, and in the supreme court of the State the defense of contiguity was wholly ignored.

It can easily be inferred, from a close examination of the Rivers case, that the only questions there intended to be decided were whether the monopoly granted complainant in its charter was abrogated by the State constitution and whether the city of New Orleans could make the grant to Rivers by reason of such abrogation, and that the question whether under a fair construction of complainant's charter and the general laws of the State the city had the right to grant a license to a citizen to lay pipes to the river to supply himself with water for his private needs was not at all considered.

In a matter so important to the public, and where the action of the city council of New Orleans cannot be restrained, uniformity in the jurisprudence which determines the value of the permits or licenses granted is very desirable, and the rights of the party who receives a license should not wholly depend upon the
460 selection made by the water works Co. of the court (State or Federal) to hear the cause.

This desirable uniformity is better attained by following the long line of decisions of the Supreme Court of the United States declaring that the Federal courts should adopt and follow the decisions of the highest court of the State in the construction of its own constitution and statutes than in following one decision of the Supreme Court on what is now conceded not to be a Federal question.

As these cases are now presented to the court and upon final hearing, I am of the opinion that decrees should go for the defendants.

461 BILLINGS, *Judge:*

Complainant submits as *his* case that by the legislative action of the State the obligation of *his* contract is impaired. In such a case I understand the Supreme Court of the United States — recognize it as the constitutional mandate that that court shall by its own judgment interpret the contract and decide as to its being impaired. This, therefore, is not a case where the construction of a charter by the court of last resort of a State is necessarily a part of the charter and conclusively binding. The Federal court must still measure the obligation and the effect of the hostile legislation. Jefferson Branch Brook *vs.* Skelly, 1 Black, 436, 443.

In the case of Water Works Co. *vs.* Rivers, 115 U. S. R., pp. 674, 681, the Supreme Court have construed this charter in respect to the point here involved. While I agree with the circuit judge that the construction — the State supreme court is contrary to that of the U. S. Supreme Court in the Rivers case, and that with reference to every other class of cases the construction of a charter by the State court of last resort would be obligatory upon the U. S. Supreme Court and upon this court, I nevertheless think that the views of the Supreme Court in the Rivers case should still control the action of this court as to the meaning of the charter already declared by it, and that the complainant should have a decree perpetuating the injunction.

As to the meaning of the expression "contiguous persons:" Contiguous may have so broad a meaning as to make it appear to speak of the entire city of New Orleans as contiguous to the Mississippi river. This is not the meaning. The use of the word compels up to stop somewhere. There is no middle point. I think the word was meant in the charter to include only the actually riparian proprietors.

462 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Maginnis Oil and Soap Works, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein The New Orleans Water Works Company, complainant, is appellant and The Maginnis Oil & Soap Works, defendant, is appellee, to show cause, if any there be, why the decree rendered against the said New Orleans Water Works Company, as in said motion and order for appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this 14 day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

463 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11565. The New Orleans Water Works Co. *vs.* The Maginnis Oil and Soap Works. Citation.

Marshal's Return.

Received June 14, 1888, by the U. S. marshal, and on the 14th day of June, 1888, I served a true copy of this original citation on the Maginnis Oil & Soap Works, in the city of New Orleans, by handing the same to Mr. C. B. Maginnis, known by me to be the secretary of the said Maginnis Oil & Soap Works, & leaving the same in his hands.

R. B. PLEASANTS,
U. S. Marshal,
By ALLEN THOMAS, JR., *Deputy.*

Service accepted.

W. S. BENEDICT,
Sol'r for Respondents.

Before me personally appeared Allen Thomas, Jr., who, being duly sworn, deposes & says that he is a lawfully qualifyed deputy U. S. marshal for the eastern dist. of La., & that the service as above set forth is correctly stated.

ALLEN THOMAS, JR.

Subscribed and sworn before me this 16th June, 1888.

E. R. HUNT, *Clerk.*

Endorsed on cover: E Louisiana C. C. U. S. No. 391. The New Orleans Water Works Company, appellant, *vs.* The Maginnis Oil and Soap Works. Filed August 3, 1888.

Office Supreme Court U. S.
FILED,
OCT 10 1891
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 68.

THE NEW ORLEANS WATER WORKS COMPANY,
APPELLANT,

versus

THE MAGINNIS OIL AND SOAP WORKS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

APPELLANT'S BRIEF.

J. R. BECKWITH,
Counsel for Appellant.

A. W. Hyatt Stat'y Mfg Co., Limited, 78 Camp street, N. O.—56,597.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 68.

THE NEW ORLEANS WATER WORKS COMPANY, APPELLANT,

versus

THE MAGINNIS OIL AND SOAP WORKS, APPELLEE.

ASSIGNMENT OF ERRORS.

1.

In the difference of opinion between the judges holding the circuit court, the circuit judge erred, both in law and fact, and his opinion ought not in right to have prevailed.

2.

The district judge's opinion and conclusion of fact and law were correct, and his opinion in right ought to have prevailed

3.

The court erred in the decree dismissing the bill.

4.

The decree should have been in favor of the complainant and for relief as prayed for, instead of the decree dismissing complainant's bill.

J. R. BECKWITH,

Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 68.

THE NEW ORLEANS WATER WORKS COMPANY, APPELLANT,

versus

THE MAGINNIS OIL AND SOAP WORKS, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Appellant's Brief.

STATEMENT OF FACTS AND PLEADINGS.

The questions of law and fact in this case are substantially the same as were involved in the case of *Water Works Company vs. Rivers, 115 U. S., 674*, decided at the October Term, 1885, and in Nos. 66 and 67 of the present docket.

The history of the New Orleans Water Works Company, and the terms of its charter and its relation to the city of New Orleans, are substantially stated in the case referred to, and are set out in detail in the bill in this cause.

The original bill was filed May 5, 1887, after the determination of the Rivers case, and avers that in April, 1883, the

legislature of this state created a corporation known as the Commercial Bank of New Orleans. (A copy of this act, in so far as it is material to this controversy, is printed in "Appendix A," annexed to this brief.) The bank had a capital of three millions, to be subscribed for as provided in the act. The corporation was authorized and compelled to establish a system of public water works in the city adequate for the supply of the city; gave the bank the exclusive right and privilege of furnishing public water supply, erecting water works, laying pipes and mains for distribution of water to be taken from the Mississippi river.

It was further provided that at the expiration of thirty-five years from the adoption of the act the city of New Orleans, if it so elected, could purchase the water works and franchise for water supply with all exclusive rights at a price to be fixed by a method of arbitration provided for in the act, to be paid to the Commercial Bank in bonds of the city, bearing five per cent. interest, payable in not less than ten, nor more than thirty, years from the date of the purchase or award.

The bank was organized and the water works established and managed and controlled by the bank, until the expiration of the thirty-five year period. The city elected to purchase the water works. There was an arbitration under the statute. The city was a considerable shareholder in the Commercial Bank. The interest in the water works not represented by the city's shares in the bank was appraised at one million three hundred and ninety-three thousand four hundred dollars; city bonds were issued for that amount and delivered to the Commercial Bank, and the bank conveyed the entire works to the city, with all of its exclusive rights and monopoly, which, in the language of the act, was to continue vested in the city forever.

The city operated the water works under this grant until early in 1878, when, under usual municipal extravagance and heedlessness, the works became practically a wreck and unprofit-

able. The city, by reason of the water works bonds and other extravagance became in serious financial distress and unable to meet the bonds or its current obligations and determined to convert the water works into an asset to exchange for some of its liabilities, and appealed to the State legislature for aid.

The legislature at an extra session, held in 1877, adopted Act No. 33, of that session, entitled "*An act to enable the city of New Orleans to promote the public health and to afford greater security against fire by the establishment of a corporation to be called the New Orleans Water Works Company;" to authorize the said company to issue bonds for the purpose of extending and improving said works and to furnish the inhabitants of the city of New Orleans an adequate supply of pure and wholesome water; and to permit the holders of water works bonds to convert them into stock and to provide for the liquidation of the bonded and floating debt of the city of New Orleans,*" etc.

A copy of this act is printed and constitutes "Appendix B" of this brief, and provides, amongst other things, that all holders of water works bonds may convert their bonds into stock of the new company. That when converted the bonds shall be delivered to the city and cancelled. That the new company shall issue to the city of New Orleans shares, amounting to $606,600, full paid shares of stock, as a bonus, and one share of one hundred dollars full paid for every one hundred dollars of the water works bonds redeemed by the city prior to the organization of the company. The corporation was to be organized when outside holders of the funded and floating city debt had subscribed to $500,000 of the capital stock, the city to have a majority of the board of directors, changed by a subsequent amendment to three of the seven directors. The bonds of the subscribers, other than the city, were surrendered, and the city, after the delivery of the full paid shares to be delivered to the city, made a formal notarial sale of the water works plant and property to the new company, vesting all of the monopoly ac-

quired from the Commercial Bank, as expressed by the charter of 1877, in the new company.

The works were dilapidated and practically worn out. The subscription to the capital stock gave no cash capital to the company, the price of all of the shares being paid to the city to the extent of over $2,000,000, in the surrender of obligations representing the public debt of the city. The company, in order to reconstruct the works and put the system in adequate working order, was compelled to borrow money and issue its bonds, issued and negotiated with the consent of the city, as provided in the charter.

The act of sale from the city was with full, express warranty of title and all of the exclusive rigths granted by the act of 1877, as well as those derived from the Commercial Bank, and included the exclusive right to provide the city of New Orleans and its inhabitants with public water supply, as well from the Mississippi river as any other source, with the exclusive right to lay pipes and mains in the streets of the city for that purpose, and was to continue for the period of fifty years from the organization of the company. The only exception to this right is contained in the 18th section of the charter of 1877.

"That nothing in this act shall be so construed as to prevent the city council from granting to any person or persons contiguous to the river the privilege of laying pipes to the river exclusively for his own or their own use." *Rec. 89.*

The city observed its obligations until after the adoption of the new constitution of the state in 1879. That constitution, in article 258, enacted that

"All rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of the constitution and not inconsistent therewith shall continue as if the said constitution had not been adopted. But the monopoly features in the charter of any corporation now existing in the state, save such as may be contained in the charter of railroad corporations, are hereby abolished."

The city at once claimed that this provision of the constitu-

tion repealed every monopoly feature in the water works charter, especially the exclusive right of the Water Works Company to lay pipes in the street, and exclusive right to supply water in mains and pipes, and committed an assault upon its warranty and the rights of the company by granting to any consumer who applied an alleged right to lay a pipe to the river, discard a water supply from the Water Works Company and pump their own supply, cutting off nearly all of the larger water consumers in the city from the Water Works Company.

The defendant in error, an oil and soap manufacturing association or corporation, engaged in the manufacture of oil and soap, was one of the beneficiaries of this bad faith. On the 18th day of March, 1884, the city council adopted an ordinance granting to the appellee a right to lay a pipe to the Mississippi river, through Julia street (*Rec. 40*). The factory of the defendant is distant from the river, or at least two or three blocks intervene. The defendant in error, under the pretended warrant of this ordinance, laid the pipe, and had, before the commencement of this action, damaged the Water Works Company, by pumping water for consumption, in a sum exceeding $5000.

The bill prayed for an account of water pumped and for a provisional and perpetual injunction.

The bill being substantially the same as the bill against the Brewing Company, No. 66 of the present docket, as that bill was amended.

On the 2d day of July, 1887, the defendant answered, admitting most of the material facts, but prudently took issue of law as to the protection afforded by the federal constitution to complainant's contract, denying the monopoly, and setting up act 56 of the acts of 1884, averring that if the monopoly had ever existed, it was lost to the complainant by the adoption of act 56, substantially the same matter as was set up in the plea in the Southern Brewery case (No. 66). A writ of injunction *pendente lite* was allowed.

The complainant replied to the answer and took issue.

The complainant, on the 6th of June, 1887, moved the court for an injunction *pendente lite*.

The hearing on motion was before both judges of the court, sitting together, and on March 4th, 1887, a writ of injunction *pendente lite* was granted, issued and served, and continued in force until final hearing.

Testimony of witnesses was taken concerning irrelevant matter as to who promoted act 56 of 1884. The acts of the legislature related to the Commercial Bank, the transfer of the bank to the city, the charter of the complainant, the transfer of the property from the city to complainant, the act of 1884, ordinance and contract for pay for public water supply, the ordinance under which this defendant claimed authority to lay and use the brewery main to the river, and like ordinances, and a map showing the location of the factory and the exhibits filed with the bill and plans made up, the proofs upon which the cause was tried on final hearing on the 12th of May, 1888, before Judges Pardee and Billings, sitting together.

The judges disagreed, and the circuit judge's (Pardee) opinion, under the statute, controlling, the bill was dismissed with costs by Judge Pardee on June 8th, 1888. Complainant appealed.

The opinion of the circuit judge and the dissenting opinion of Judge Billings are printed in the record, page 246 et seq.

The charter of the complainant company has been the subject of considerable litigation in both the state and federal courts. The city of New Orleans, immediately after the adoption of the constitution of 1879 and after more than two millions of its public debt had been lifted off by exchange into water works stock, commenced its assaults upon the company, first, by assessing a municipal tax in the face of its obligation to exchange taxation for public water supply. In this they were sustained by the State Supreme Court under its construction of

the constitution of 1864, in force at the time of the adoption of the charter.

This was followed by a wholesale adoption of ordinances authorizing consumers not contiguous to the river, to establish water works of their own within the territory covered by the complainant charter. One of these grants was to Rivers, the lessee of the St. Charles Hotel, in the middle of the city; another was to the Crescent City Sugar Refinery Company situated near the river. Proceedings to arrest the installation of the Sugar Refinery Company's work were instituted in the courts of of the state and went to the Supreme Court, and was heard and determined at the December term of that court in 1883. The State Supreme Court undertook to construe the charter of the complainant and defining the character of contract involved. The case is reported in *35 A. 1111.*

In order to defeat the plaintiff in the cause the Supreme Court was compelled to construe the charter into a meaning which if understood, at the time of the organization of the present company, would have left the water works in the hands of the city, as no holders of the public debt would have exchanged their bonds for a share of the stock, representing only the shadow of sustenance, decreed by the State Supreme Court to be all that was bought with their money or bonds. The opinion in the case is not very clear but seems to construe the contract between the state and complainant as simply a grant of the exclusive right to *pump and sell water* and that there was nothing in the contract to prevent the city from allowing every consumer of water in the city to establish his own water works, and pump water through his own mains, provided he did not *sell* water to others. If this is the true and an honest construction of the contract the inhabitants on any of the populous streets can lay a common main to the river and supply themselves, provided they do not *sell* water to others.

By this attack on the Water Works Company its large con-

sumers were cut off and the profitless suburbs and public water supply for municipal purposes, was all that its stockholders purchased with their two million dollars. A writ of error to this court was sued out and perfected.

The complainant determined to submit the construction of its charter and contract rights to the federal courts, and in April of that year filed a bill to restrain Rivers from laying a pipe to the St. Charles hotel, under an ordinance of the same character as the Refinery ordinance.

To this bill the defendant demurred. The circuit court sustained the demurrer on the ruling of the State Supreme Court in the Refinery case. There was an appeal to this court, where the cause was heard at the October term, 1885, reported in *Water Works vs. Rivers, 115 U. S. 674*, determined at the same time with New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S. 651, and the Louisville Gas Co. vs. the Citizens' Gas Co., 115 U. S. 684.

At the same time there was pending in this court an appeal in another action, involving the construction of the complainant's rights under its charter, *the New Orleans Water Works Company vs. the St. Tammany Water Works Company*, an appeal from a decree of the Circuit Court of the United States in Louisiana, by the defendant. The appeal was heard and determined at the October term of this court, 1886, and is reported in 120 U. S. 64. Both of these causes involved the construction of the contract contained in the complainant's charter and the effect of the state constitution of 1879 on the monopoly grant.

The writ of error to the Supreme Court of the State in the case of the Water Works Company vs. the Sugar Refinery Company was pending in this court when the case of Water Works Company vs. Rivers was heard. The Circuit Court, in the Rivers case, sustained the demurrer to the bill on the ground that the Supreme Court of the State had given a construction of the complainant's charter in the case of the Sugar Refinery Company, 35 La. Ann. 1111, then in this court on error. Counsel

for the Refinery Company, on that ground, applied to this court for permission to be heard in the *Rivers* case in support of the conclusions of the *State Supreme Court in the Refinery case.* Permission was granted, and counsel for the refinery appeared in the cause and set up and asserted the soundness of the construction given by the state court. The correctness of the construction of the State Supreme Court was the only substantial ground set up by all of the counsel representing the defendants in the bill in support of the decree sustaining the demurrer of Rivers, thereby calling on this court to practically review the state court.

This court, with no uncertain utterance, discarded the conclusion of the state court in the Refinery case and construed the charter for itself, declaring in accordance with the doctrine laid down in the *New Orleans Gas Company vs. Louisiana Light Company, 115 U. S. 650, and the Louisville Gas Company vs. Citizens Gas Company, 115 U. S. 683,* that it was competent under the constitution of the state, as it existed prior to 1879, for the state

" to provide for supplying the city of New Orleans and its people with illuminating gas, by means of pipes, mains and conduits placed at the cost of a private corporation for supplying by the same means, pure and wholesome water for a like use, in the same city, the right to dig up and use the streets and alleys of New Orleans, for the purpose of placing pipes and mains, to supply the city and its inhabitants with water, is a franchise belonging to the state, which she could grant to such persons or corporations, and upon such terms as she deemed best for the public interest, and as the object to be attained was a public one, for which the state could make provision by legislative enactment, the grant of the franchise could be accompanied with such exclusive privileges to the grantee in respect of the subject of the grant, as in the judgment of the legislative department would best promote the public health and the public comfort, or the protection of public and private property. Such was the nature of the plaintiff's grant, which, not being at the time prohibited by the constitution of the state, was a contract, the obligation of which cannot be impaired by subsequent legislation or by a change in her organic law * * * *

* * * * * * *

The permission given to the appellee by the city council to lay pipes in the streets for the purpose of carrying water to his hotel is plainly in derogation of the state's grant to the appellant, for if that body can allow such a use of the public way to him it may grant a like use to all other citizens and to corporations of every kind, thereby materially diminishing, if not destroying, the value of the plaintiff's contract, on the faith of which it has expended large sums of money and rendered services to the public, which might otherwise have been performed by the state or city at the public expense."

This doctrine was specially affirmed in the case of *St. Tammany Water Works vs. N. O. Water Works, 12 U. S. 64.*

It can, therefore, it seems, be taken as the settled adjudication of this court that the complainant's charter lawfully and for a valuable consideration established a contract with the state by which the complainant acquired an exclusive right to lay pipes and mains in all of the public ways of New Orleans, for the exclusive supply of water to the city and its inhabitants, by means of distribution in pipes and mains. That article 258 of the constitution of 1879 in terms cutting off all monopoly grants except those conferred on railroad companies, is inoperative against the earlier grant to the complainant ; and that an alleged grant to the city of New Orleans of a right to other persons or corporations, to lay pipes and mains in the public ways of New Orleans and pump their own supply of water, is violative of the charter contract of complainant and repugnant to the federal constitution, unless made to riparian owners or those included in the proviso set forth in the 18th section of complainant's charter.

That persons and corporations whose premises are so situated that streets and blocks with private ownership intervene between these premises and the Mississippi river, are not within the proviso of the 18th section of complainant's charter. The question of contiguity to the Mississippi river is not involved in this cause, ~~as the brewery of the defendant is located more than twice as far distant from the Mississippi river as is the St.~~

Charles Hotel, determined not to be contiguous in the [illegible] case.

Unless both the Rivers and St. Tammany cases are to be reversed, with New Orleans Gaslight Co. vs. Louisiana Light Co., 115 U. S. 650, and Louisville Gas Co. vs. Citizens' Gas Co., 115 U. S. 683, the law and construction of the complainant's charter seem settled in this court.

The Circuit Court so held on the motion for injunction *pendente lite*, but after the allowance of the writ, but before final hearing, the opinion of this court in *the New Orleans Water Works Company vs. the Louisiana Sugar Refinery Company, 125 U. S. 18*, was published, and, as we believe, misunderstood by the circuit judge, and led to the disagreement between the judges in their opinions in the case.

The opinions of both judges sitting in the case are printed in the record, page 200 *et seq.* The circuit judge evidently understood the case in 125 U. S. as overruling both the Rivers and St. Tammany cases, and as adopting the opinion of the State Supreme Court, construing the charter of the Water Works Company, when this court simply determined that the State Supreme Court placed its determination of the case upon such grounds as to cut off federal review, and therefore was without jurisdiction to determine whether the Supreme Court of the State had erred in its conclusions, and so far from attempting to adjudicate rights between parties, it had only power to dismiss the writ of error, and of course did not attempt to either reverse, affirm, or even consider the determination of the State Supreme Court beyond that inspection necessary to determine the question of jurisdiction.

The circuit judge acted upon the belief that the federal courts are at all times, under all conditions, and in every controversy, bound to follow and adopt the construction given by the state courts to state laws and constitutions, even when the construction is forced and resorted to to prevent review by the federal Supreme Court.

This is not and never has been the rule, at least as understood by the circuit judge.

The uniform jurisprudence of this court has been that it possessed the untrammeled right to construe for itself every ordinance or statute of a state alleged to embody a contract and all enactments alleged to impair obligations and repugnant to the federal constitution in that respect. It seems idle to cite authority in support of this proposition, and we go no further back than 1 Black's Reports. *Jefferson Branch Bank vs. Shelley*, 1 Black, 436, is the case most commonly cited. It was insisted by the defendant in error in that case that this court must abide by the determination of a state court, that a particular statute did not constitute or amount to a contract protected by the federal constitution.

The court, in its opinion, declared :

"It has never been denied, nor is it now, that the Supreme Court of the United States has an appellate power to revise the judgment of the supreme court of a state whenever such a court shall adjudge that not to be a contract which has been alleged in the forms of legal proceedings by a litigant to be one within the meaning of the clause of the constitution of the United States which inhibits the state from passing any law impairing the obligation of contracts. Of what use would the appellate power be to the litigant who feels himself aggrieved by some particular state legislation, if this court could not decide independently of all adjudication by the supreme court of a state, whether or not the phraseology of the instrument in controversy was expressive of a contract, and within the provisions of the constitution of the United States, and that its obligations should be enforced notwithstanding a contrary conclusion by the supreme court of a state? It never was contended and cannot be sustained by any course of reasoning, that this court should or could, with fidelity to the constitution of the United States, follow the construction of the supreme court of a state in such a matter, when it entertained a different opinion ; and in forming its judgment in such a case it makes no difference in the obligation of this court in reversing the judgment of the supreme court of a state upon such a contract whether it be one claimed to be such under the form of state legislation, or has been made by a covenant or agreement by the agents of a state by its authority"—(page 443).

The most marked exception to the rule of following the construction of statutes or constitutions of the states by its own courts is in this very matter of contracts. This case in 1st Black, has been cited, affirmed or approved in innumerable cases, of which we only cite the following:

Butz vs. Muscatine, 8 Wall. 575–582.
Delmas vs. Ins. Co., 14 Wall. 661–668.
Salt Co. vs. Saginaw, 13 Wall. 373–376.
University vs. People, 99 U. S. 309–323.
Wright vs. Nagle, 101 U. S. 791.
Railroad Company vs. Palmes, 109 U. S. 244–256.
Virginia Coupon Cases, 114 U. S. 270.
Louisville Gas Co. vs. Citizens' Gas Co., 115 U. S. 683–697.
New Orleans Water Works Co. vs. Rivers, 115 U. S. 674.
St. Tammany Water Works Co. vs. New Orleans Water Works Co., 120 U. S. 64.

We respectfully submit that this Court, having twice construed the contract involved in the complainant's charter, its meaning is no longer an open question in this court.

The effect of act 56 of the acts of 1884 on the charter of the complainant, if any, does not seem to merit any discussion. It does not pretend to amend the charter in terms, declares that it shall have no effect as change and modification of the prior legislative grant, and can only be construed to be an enabling act, to give the city power that it possessed under its charter without further legislation.

The location of the appellees' property as disclosed in the answer and by the map in the record, does not call apparently for any construction of the reservation or proviso contained in the 18th section of the complainant's charter, as appellees cannot consistently claim to be a "contiguous person" or corporation.

There would seem to be no difficulty if appellee was even

nearer the river. We understand the rule of construction of a limitation or proviso in a statute conferring a grant, for a valuable consideration to be paid by the grantee, to be the same as the rule applied in case of private grants or contracts with reservation or proviso—that is, that the limitation or proviso is to be construed strictly in favor of the largest grant, with the least limitation consistent with the language of the proviso or limiting clause.

To constitute a riparian owner, the title deeds must grant an actual front on the river.

Cotton Press Case, 18 La. 237.

Livingston vs. Hennan, 9 Martin, 656.

Cochran vs. Fort, 7 N. S. 627.

8 N. S. 576.

A title conveying property in a square in a city, bounded by streets named, grants no riparian rights.

Winter vs. New Orleans, 26 An. 310.

The construction to be given to the word "contiguous," or "persons contiguous to the river," contained in the 18th section of the water works charter, cannot be well made the subject of discussion, as the meaning of the word is too well established. Being contained in a proviso made in a general grant, made for valuable consideration, it must be construed strictly, and held to limit the grant no more than the fair meaning of the words import.

Webster defines "contiguity" to be "the state of being in actual or close contact," and quotes Dryden as authority for saying that "contiguously" means, "in a manner, to touch, without intervening space." The word "contiguous" is used in the highway law of Louisiana. La. Revised Statutes, section 2754. This section declares, "Roads shall not be closed without the consent of the contiguous property holders."

In Raxedale, vs. Seip, 32 An. 435, the Supreme Court of

Louisiana held, that the words quoted were intended to designate persons whose property is actually touching on the road, and exclude "property holders who, although vicinal, are not contiguous." The question of the meaning of the words "contiguous buildings," as used in insurance policies, was brought in question in Askell vs. Ins. Co., 69 N. Y., 192. The court declared, "contiguous" is defined to be "adjacent, in actual close contact, touching, near." The word "contiguous" is a relative term, and when employed in reference to a building, evidently means "in close proximity to the same." In this case it was held that a building fifty feet distant from the building insured was not "contiguous" to it.

In Sporehawk vs. Salem, 1 Allen, 30, it was held, that a statute of Massachusetts, requiring cities and towns to protect travelers on the highway from dangerous places contiguous to the way, did not apply to a railway embankment forty feet from the street—not contiguous to it.

In Saulet vs. Shepherd, 4 Wall. 508,, Justice Grier says:

"The right to alluvion depends upon the contiguity of an estate to the river. Before there can be a right to accession or accretion, there must be an estate to which the accession can attach. The plaintiff's claim seems to be founded on the notion that the right to alluvion adhered to the original plantation, and not to the particular portion of it that borders on the river."

To hold or assert that the appellee, not pretending to own an estate running to the banks of the river, or a "person contiguous to the river," would be to give to the 18th section of the water works charter a construction that would render every inhabitant of the city of New Orleans "contiguous to the river," without the proviso, for beyond doubt the entire city, as a city, is contiguous to the river, by an enlarged and loose use of the word, a meaning certainly never contemplated by either the grantor or grantee.

We respectfully submit that the circuit judge erred, and Judge Billings was correct in the questions upon which there was difference between the judges, and that the decree of the circuit judge should be reversed and the bill sustained for all of the relief sought as prayed for.

J. R. BECKWITH.
Counsel for Appellant.

APPENDIX A.

EXTRA SESSION OF 1877.

No. 33] **AN ACT.**

To enable the city of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Water Works Company;" to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water works bonds to convert them into stock, and provide for the liquidation of the bonded and floating debt of the city of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly Convened*, That a corporation be, and the same is hereby created, to be styled, "The New Orleans Water Works Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

SEC. 2. *Be it further enacted, etc.*, That immediately after the organization of the said Water Works Company, as hereinafter provided, it shall be required to issue to the city of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of water works bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of said capital stock shall be reserved for the benefit of all holders of water works bonds, to the extent of the amount now outstanding, who may elect to avail

themselves of the provisions of this act; and the said Water Works Company shall issue to the said city of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said water works bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding water works bonds for stock, as aforesaid, the city of New Orleans shall be entitled to all the certificates for the shares of said stock as said New Orleans Water Works Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the city of New York, give notice that it will exchange said stock at par for said water works bonds, at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said City of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

SEC. 3. *Be it further enacted, etc.*, That the said Water Works Company shall be organized by the mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said water works bonds, which shall have been extinguished by said city, and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the administrator of

finance, the said subscribers shall assemble together on a day to be named by the mayor, and shall elect a board of directors, to consist of seven persons, four of whom shall be designated by the mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first board of directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said board shall elect one of their number as president.

SEC. 4. *Be it further enacted, etc.*, That as soon after the election of said board of directors as the city council may determine, the mayor of the city shall transfer, by notarial act, to said New Orleans Water Works Company the water works and all the property appurtenant thereto.

SEC. 5. *Be it further enacted, etc.*, That the said Water Works Company shall own and possess the privileges acquired by the city of New Orleans from the Commercial Bank; that it shall have, for fifty years from the passage of this act, the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting or constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city or to distribute the same to the inhabitants of said city, and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper, in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of con-

duits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city of New Orleans ; *provided*, the same shall not be an obstruction to commerce or free circulation ; and also to have and use a common seal and alter the same at pleasure ; to ordain and establish by-laws for its government and that of its officers and employees, not repugnant to this act and the constitution of the state and of the United States, or the ordinances of the city of New Orleans.

SEC. 6. *Be it further enacted, etc.*, That on the first Monday of July, eighteen hundred and seventy-eight, and annually thereafter, an election for directors of said company, after ten days' notice of the same, and place of holding the same, shall be held, at which election there shall be elected four directors by all the stockholders other than the city of New Orleans ; and the mayor of the city, the administrator of water works and public buildings, and the administrators of finance of said city, shall be *ex-officio* directors of said company ; the said city, through its mayor and administrators, shall have the right to vote at the election of directors, and at all meetings of said stockholders, in the same manner as any other stockholders. That at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The directors elected shall serve for one year ; and shall hold their offices until their successors are appointed ; and no failure to elect directors at the time designated, shall prevent the board of directors from fixing another day for holding the election ; and in case of vacancy in the board of directors, occasioned by death, resignation or absence from the state, or other cause, the board of directors may fill such vacancy for the remainder of the year.

SEC. 7. *Be it further enacted, etc.*, That the stock owned by said city of New Orleans in said Water Works Company, shall not be liable to seizure for the debts of said city.

SEC. 8. *Be it further enacted, etc.*, That the stock of said Water Works Company may be increased to two millions of

dollars, for the purpose of enabling said company to improve, enlarge and extend its works: *Provided*, that the new or increased stock shall be paid for in cash, or in work done for the company; and in case of non-payment of instalments on stock subscribed for, the same may be forfeited to the use of said company.

SEC. 9. *Be it further enacted, etc.*, That the board of directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of pure water; and to accomplish this purpose, the said board of directors are hereby authorized to issue the bonds of the company to an amount not exceeding two millions of dollars, in such sums, on such terms, and bearing such rate of interest as said board may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchises to be a corporation, and said mortgage may include the property and franchises of said company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the parish of Orleans, shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re-inscription: *Provided, however*, that no bond shall be issued, or mortgages given, without the consent of the council of the city of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said council of said city.

SEC. 10. *Be it further enacted, etc.*; That said company shall not declare or pay any dividends, except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt, nor shall any dividends be declared until the contemplated works are completed and in use.

SEC. 11. *Be it further enacted, etc.*, That the city of New Orleans shall be allowed to use water from the pipes and plugs of said company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets and charitable institutions, and that the said company shall place, free of any charge whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of fires, for watering the streets and cleansing the gutters, and for any other public purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners. It shall be the duty of the said company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Water Works Company, used in accordance with this act, shall be exempt from taxation—state, municipal and parochial.

SEC. 12. *Be it further enacted, etc.*, That the said Water Works Company shall have the right in the city of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water; *provided*, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs, and that said streets shall be restored to the same condition they were in as soon as practicable, by the said company, under the supervision of the city surveyor. In case the said Water Works Company shall require any lot of ground in the city of New Orleans, or any lot of ground or quantity of land situated in any parish of this state, for the purpose of constructing reservoirs or other works, or for the purpose of laying pipes to conduct water to the city of New Orleans, and shall not be able to agree

with the proprietor or proprietors of said lot of ground or land, the said company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may hereafter be enacted, and if the object of said company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not to the rights of absolute ownership.

SEC. 13. *Be it further enacted, etc.*, That the said Water Works Company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi river, or elsewhere, as may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this act and shall be year by year completed, so that, within five years from the date of this act, they shall be completed so as to give an adequate supply of water to the people of the city of New Orleans, exclusive of the fifth district. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein, and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said company shall, from time to time, as the wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum, extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said Water Works Company to comply with this provision shall work a forfeiture of this charter.

SEC. 14. *Be it further enacted, etc.*, That the city of New Orleans, through its council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such

terms of adjustment as may be agreed upon between the city council and the holders of such bonded or floating debt; *provided*, said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the council reserving the right to reject any and all bids.

SEC. 15. *Be it further enacted, etc.*, That the said Water Works Company shall have the right to fix the rates of charges for water; *provided*, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the city council shall have the power to appoint a committee of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profits shall exceed ten per cent. the city council shall have the right to require said company to reduce the price of water in such manner and in such a proportion, that the profits shall never exceed the above named rates; *and provided further*, that the rates charged shall never exceed those now paid by the city, and in case said company shall refuse compliance, the demand of said city may be enforced by a writ of mandamus.

SEC. 16. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its suburbs, or shall change, alter, remove, injure or destroy any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the city of New Orleans, under the authority of this act; or if any person shall alter, change or pollute the water or stream which the said company shall hereafter introduce, or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such offense, and being thereof

convicted, shall be fined at the discretion of the court, according to the nature of the offense, and imprisoned for a term not exceeding seven years, such fine to be paid and applied to the use of said company.

SEC. 17. *Be it further enacted, etc.*, That until other works are constructed by which the present works may be dispensed with, the same shall remain under the control of the city council, and the superintendence thereof remain in the hands of the administrator of water works and public buildings; but the said company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the company, the city shall have the right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should ythe cit neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the city council from granting to any person or persons, contiguous to the river, the privilege of laying pipes to the river exclusively for his own or their own use.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant-Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,
Secretary of State.

No. 43.] AN ACT

Relative to the Charter of the New Orleans Water Works Company and amending an Act Number Thirty-three of Extra Session of eighteen hundred and seventy-seven (1877), approved March 31st, 1877.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That, at the election to be held on the first Monday of July, eighteen hundred and seventy-eight (1878), and annually thereafter, for directors of the New Orleans Water Works Company, the stockholders of the said New Orleans Water Works Company shall elect four directors, but the city of New Orleans shall not vote at said elections, she being already fully represented, for the amount of her stock, by the mayor of the city, the administrator of water works and public buildings, and by the administrator of finance, who are *ex-officio* directors of said company.

SEC. 2. *Be it further enacted, etc.,* That section ten (10) of said Act Number Thirty-three (No. 33), of Extra Session of the year eighteen hundred and seventy-seven (1877), be amended and re-enacted so as to read as follows: "That said company shall not declare or pay any dividends except in cash, and then only out of the net semi-annual or annual receipts after payment of expenses of operation, and gradual extension, and the interest on its bonded debt."

SEC. 3. *Be it further enacted, etc.,* That section seventeen (17) of aforesaid act be amended and re-enacted so as to read as follows: "That at the expiration of fifty years from the organization of the company, the city shall have the right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts: two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be, *ipso facto,* extended for fifty years longer, but without any exclusive privi-

lege or right to supply water according to the provisions of the charter."

SEC. 4. *Be it further enacted, etc*, That the time allowed to the said New Orleans Water Works Company to commence and proceed to the erection of new works and pipes (as contemplated by said act Number Thirty-three), (No. 33), shall commence six months after the organization of said company, and not from the date of the passage of said act.

SEC. 5. *Be it further enacted, etc.*, That the full, complete and adequate supply of water referred to in section thirteen (13) of said act No. 33, shall be so construed as to require a supply of water at the height of not less than fifteen (15) feet from the ground wherever the pipes of the water works now exist.

SEC. 6. *Be it further enacted, etc.*, That the word "State" in section eleven (11) of said act No. 33 of 1877, and in the last line thereof, be stricken out, so that the said company shall not be exempt from state taxation.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws contrary to the provisions of this act, or in conflict therewith, are hereby repealed to the extent that they do conflict, and that this act shall take effect from and after its passage.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved February 26, 1878.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,
Secretary of State.

APPENDIX B.

EXHIBIT A, FILED WITH BILL.

No. 56.] AN ACT

To provide for the supply of water to the city of New Orleans, by the New Orleans Water Works Company, in cases of the municipal taxation of said company; to authorize provision to be made for the payment of water supplied and to be supplied; to provide for obtaining a supply of clear or filtered water by the New Orleans Water Works Company, and to enable the city of New Orleans to contract for the same; to regulate the payment of taxes imposed on said company contrary to the exemption given in its charter and to put into effect section 11 of act No 33 of acts of 1877, E. S., in instances of refusing or contrary to the exemption therein.

Whereas, Due notice and advertisement has been given and made of the intention to apply for this act pursuant to article 48 of the constitution of this state; and

Whereas, The New Orleans Water Works Company is being subjected to municipal taxation notwithstanding the exemption from taxation granted by its charter in consideration of water to be supplied to the city of New Orleans; and

Whereas, It is possible and desirable to furnish the inhabitants of New Orleans with clear or filtered water from the Mississippi river; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That in all instances of the taxation of the franchises of property of the New Orleans Water Works Company for any year or years by or for the city of New Orleans, or for municipal purposes, whether such taxation be for past or future years, and the said company be in any manner obliged to pay, notwithstanding the exemption granted in section 11 of act No. 33 of acts of 1877, E. S., then in all such instances, the said city of New Orleans is hereby empowered and required to pay the said company the value of all the water the said company has sup-

plied or shall supply, during any year or years for which said taxes have been or shall be levied, to or for the use and purposes of the city of New Orleans, its public buildings, markets, or for streets, gutters, extinguishment of fires, or other public purposes.

SEC. 2. *Be it further enacted, etc.*, That in all instances of such taxation, contrary to said exemption, or any future year or years, the city of New Orleans shall provide in its budget, or shall set apart and appropriate a sum sufficient to pay for the said water supply for said year or years, and unless this be observed and done, the said company shall not be compelled to deliver water for the uses and purposes aforesaid.

SEC. 3. *Be it further enacted, etc.*, That any taxes already imposed for any year, contrary to said exemptions, shall not be exacted, nor any penalty or interest accrued be demanded thereon, or any begin to run until said city shall have provided for the payment of the water supplied in said year, or provision made therefor by remedy at law or equity.

SEC. 4. *Be it further enacted, etc.*, That to secure the inhabitants of New Orleans and to the use of the city a supply of filtered or clear water, the city of New Orleans be and is hereby empowered to contract with the said company, and determine upon terms and conditions, and fix a price for obtaining from said company such supply of clear or filtered water.

SEC. 5. *Be it further enacted, etc.*, That nothing in this act shall be construed as in any manner abridging or otherwise affecting any of the rights, franchises and privileges heretofore granted to said company; but all such rights, franchises and privileges shall continue and belong to said company.

SEC. 6. *Be it further enacted, etc.*, That all laws or parts of laws inconsistent herewith be and are hereby repealed, and this act shall have effect from and after its promulgation.

H. W. OGDEN,
Speaker of the House of Representatives.
CLAY KNOBLOCH,
Lieutenant-Governor and President of the Senate.
S. D. McENERY,
Governor of the State of Louisiana.

Approved 7th July, 1884.

APPENDIX C.

AN ACT.

To incorporate the Commercial Bank of New Orleans.

Whereas, sundry inhabitants of the city of New Orleans have petitioned this General Assembly, setting forth that they are desirous of establishing a company in the city of New Orleans, invested with banking privileges, and to be entitled the "Commercial Bank of New Orleans:" the chief object of which said company, is to be the conveying of water from the river into the city of New Orleans and its faubourgs, and into the houses of its inhabitants: *And whereas*, the said object will greatly contribute to the security of the said city from fire, and to the health and convenience of the inhabitants, and the agricultural and commercial interests of this state may be greatly promoted by extending to said company the privileges required, *therefore*,

* * * * * * * *

SEC. 4. *Be it further enacted, etc.*, That all such persons as shall become subscribers to said company, their successors and assigns, shall be and are hereby created and made a corporation and body politic, by the name and style of the *Commercial Bank of New Orleans*, and by that name shall be and are hereby made capable in law, to have, hold, purchase, to receive in payment of debts, possess, enjoy, and retain, to them and their successors, property and estate of what nature, kind, or quality soever, or so far as is necessary to carry into complete effect the object of this charter, which is declared to be the furnishing of the city with good and wholesome water; and the same to alien, transfer and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court or courts of record, or other place whatsoever; to have forever the exclusive privilege, from and after the passing of this act, of supplying the city and inhabitants of New Orleans and its faubourgs, with water from the river Mississippi, by means of pipes or conduits, and for erecting, constructing, or working of any

necessary engine; and they may contract for, purchase or lease the right to enter and pass through, from time to time, as occasion may require, any lands or grounds through which they may deem it necessary to convey the said water into said city and its faubourgs, and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the river from any place or places that they may deem fit, and to raise and construct such dykes, mounds or reservoirs, as they may judge proper, for securing and conveying such supply of water, as aforesaid, to the said city and the faubourgs thereof, and to survey such lands as they may think proper, in order to ascertain the best mode of furnishing such supply, and to lay and place any number of conduits, pipes and aqueducts, and to cleanse or repair the same, through or over any of the lands or streets of the city of New Orleans and its faubourgs, and also to have and use a common seal, and the same to break, alter and renew at pleasure; and also, through their president and directors, to ordain, establish, and put in execution, such by-laws, ordinances and regulations as shall seem necessary and convenient for the government of said corporation, not being contrary to this act, nor to the constitution and laws of the United States, or of this state, or ordinances of the city council of New Orleans, and generally to do and execute all such acts, matters and things, as to them shall or may appertain to do, subject, nevertheless, to the rules, regulations, restrictions, limitations and provisions hereinafter specified and declared. *Provided, however*, that at any time after the expiration of thirty-five years from the passage of this act, it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans, the water works constructed by said company, in virtue of this act—and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided.

* * * * * *

SEC. 11. *Be it further enacted, etc.*, That said company shall, within twelve months after the first election of directors, commence works, and commence to procure such materials as may be necessary to enable them to furnish the inhabitants of the city of New Orleans and its faubourgs, with sufficient water from the river at all seasons of the year; and in order that the true intent and meaning of this act be strictly adhered to and complied with, and that the water works contemplated to be constructed by said company, to be completed in the shortest time practicable, under all the circumstances, the sum at least one hundred thousand dollars shall be expended on the works aforesaid, annually, until the said company is in a situation to supply, and actually do supply, water to the greater part of the streets of the city proper, and the principal and most populous streets of the faubourg—said expenditure to commence within one year after the passage of this act—so that the city of New Orleans and the faubourgs thereof may be furnished with water in the streets, and such inhabitants may procure it by means of conduits or pipes, within their houses and lots, at a price to be regulated by the company; and should the said company fail or neglect either to commence or continue said works as aforesaid, then, and in such case, the charter now granted shall be wholly null and void; *provided, however*, that the net profits on the same shall not exceed an interest of fifteen per centum per annum, from the time of disbursements on said works; and at such times as dividends shall be declared by the bank, say semi-annually, the interest on the sum expended in constructing said water works shall be added thereto, and shall form part of the capital invested, until the net revenue of said works amount to fifteen per centum as aforesaid; *and provided, also*, that the city council of New Orleans shall have the power, annually, to appoint a committee, who shall have access to such of the books of said bank as relate to the said Water Works Company, and may make such extracts from the same as they may think necessary; *and provided, further*, that at the end of five years after the first

appropriation, the said net profits shall not exceed ten per cent. —and in case said profits should exceed fifteen per centum during the first five years and ten per centum afterwards, as provided for in this section, the city council shall have the power to reduce the price of water, in such a manner and in such a proportion that the profits should never exceed the above mentioned rates.

* * * * * * * *

SEC. 21. *Be it further enacted, etc.*, That within the first thirty days that the books are opened for subscription, the corporation of the city of New Orleans may subscribe for five thousand shares of the capital stock of said company, not subject to deduction; and for which the said company may receive the bonds of the mayor, aldermen and inhabitants of New Orleans, redeemable in forty years, bearing an interest not exceeding five per centum per annum, payable half yearly.

SEC. 22. *Be it further enacted, etc.*, That if, agreeable to the twenty-first section of this act, the corporation of the city of New Orleans shall subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, then, and in that case, the city council of New Orleans shall annually elect, by ballot, from the mayor, recorder, and aldermen of said council, two persons, who shall be members of the board of directors; and the stockholders shall only elect eleven instead of thirteen directors, as provided for in the third and sixth sections of this act, in which election the said city council shall not vote as stockholders; *provided*, that nothing herein contained shall be so construed as in any manner to impede, diminish or impair the rights and powers granted to the city council of New Orleans, and to the committee to be appointed by them annually, by virtue of the eleventh section of this act.

SEC. 23. *Be it further enacted, etc.*, That the provisions of the thirteenth section of this act, relative to half yearly dividends, shall not be so construed as to apply to the stock, subscribed for and owned by the corporation of the city of New

Orleans; the dividends arising from the shares so owned shall be applied, first, to the payment of the interest on the bonds given to the Commercial Bank of New Orleans for the stock subscribed by the said corporation, and the surplus shall be passed to the credit of the said corporation, half yearly, at such times as dividends are payable to other stockholders, to be set apart as a sinking fund, applicable alone to the payment of the bonds of said corporation when they shall become due, and the said corporation shall be allowed an interest of five per centum per annum on the same by the Commercial Bank of New Orleans.

SEC. 24. *Be it further enacted, etc.*, That if the corporation of the city of New Orleans shall fail to subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans within the first thirty days the books are opened for subscriptions, the twenty-first, twenty-second and twenty-third sections of this act shall be considered null and void and of no effect.

* * * * * * * *

SEC. 33. *Be it further enacted, etc.*, That in the city of New Orleans, its suburbs and adjoining lands laid out in town lots, he company shall have the power of using the streets and public places for the purpose of placing pipes to run the water; *provided*, they do not obstruct the said streets longer than will be absolutely necessary for the said purpose, or for making any repair; *and provided* they restore the said streets to the same condition they were before in as short a time as possible; that within the said limits it shall not have power to place any pipe, or do any work upon any lot of ground, without the consent of the owner; and that out of the said city, its suburbs and the lands laid out in town lots, if the said company shall not be able to agree with the proprietor or proprietors of lots of ground through which it may be necessary to run the water, through pipes or otherwise, as the directors may deem expedient, for the purpose of introducing water into the said city and its fau bourgs; or if such owner or owners shall be absent, out of the

state, or unknown, or shall, from incapacity, legal or otherwise, be precluded from making any contract or agreement in relation thereto, it shall and may be lawful, on the application of the president and directors of the Commercial Bank of New Orleans, for the judge of that judicial district of Louisiana wherein the city of New Orleans is, or may be hereafter, situated, to issue his warrants to the sheriff of the parish of Orleans, commanding

* * * * * *

SEC. 36. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its faubourgs, or shall change, alter, remove, injure or destroy, any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the city of New Orleans and its faubourgs, under the authority of this act; or if any person shall alter, obstruct, change or pollute, by any tan-yard, hog-stye, slaughter-house, dye-pot, or otherwise, the waters or streams which the said company shall hereafter introduce, or shall be preparing to introduce into the city of New Orleans and its faubourgs, under the authority given and regulations prescribed by this act, such person or persons shall be indicted in the proper court for the trial of offences within the parish of Orleans committed, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offence, and imprisoned for any time not exceeding seven years; such fine to be paid and applied to the use of said company.

* * * * * * * *

SEC. 38. *Be it further enacted, etc.*, That the corporation of New Orleans shall be supplied by the said company, free of charge, with all water necessary for the extinguishment of fires and other public purposes; nor shall the city council be subject to any charge for water furnished to supply the gutters of the said city and faubourgs; and that the said company, as they

progress in laying aqueducts, shall place, free of any charge whatever, two hydrants of a proper construction, in front of each square, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn, for extinguishing fires, for wetting, washing and watering the streets and gutters, and any other public purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners; that the said hydrants shall be of a proper size and made so as at all times to furnish water for the fire engines, and purposes herein mentioned; it shall further be the duty of said company to supply water for all the purposes herein mentioned, at all times during the continuance of this charter, unless prevented by some unavoidable accident, and in case such shall occur, the repairs shall be made and the water again furnished at the expiration of the necessary delay; and the said company shall supply a sufficient quantity of clear, pure and wholesome water for the use of the inhabitants, within the limits aforesaid, at the elevation of fifteen feet, when the same may be required. *Provided, however*, that said hydrants shall be under the control of the Commercial Bank.

* * * * * *

SEC. 41. *Be it further enacted, etc.*, That the second section of this act shall not be so construed as to apply to the payment of ten dollars per share *at the time of subscribing*, on the stock subscribed for by the city council of New Orleans. But said corporation shall, within thirty days from the organization of the first board of directors of the Commercial Bank of New Orleans, execute in the form required by the directors, the bonds of the mayor, aldermen and inhabitants of New Orleans, to the order of the president and directors of said company for the full amount of stock subscribed by the corporation aforesaid, say five hundred thousand dollars, bearing an interest of five per centum per annum, payable in forty years, the interest on said bonds to be paid semi-annually; and should the bonds

taken by said company, from the corporation aforesaid, be sold at a premium, such premium or excess, over and above their par value, shall form a part of the sinking fund, as provided for in the twenty-third section of this act.

SEC. 42. *Be it further enacted, etc.*, That when, after the expiration of thirty-five years, the said corporation of New Orleans shall be inclined to buy the said water works from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the Commercial Bank of New Orleans, and five by the city council of New Orleans; said arbitrators not to be stockholders in said company, nor members of the city council of New Orleans. Said arbitrators shall take into consideration the *value* of the water works and grounds appertaining thereto, for supplying the city and faubourgs of New Orleans with water by the said company; and if they agree, and so report, in *writing*, their award shall be binding on the respective parties. But in case of disagreement, the judge of the judicial district court in which the said water works are situated, shall appoint as umpires, five disinterested individuals as above, whose decision and award *in writing*, reported to the judicial district court aforesaid, shall be binding and conclusive. And the amount so agreed upon shall be payable in the bonds of the mayor and aldermem and inhabitants of New Orleans, bearing an interest of five per centum per annum, interest payable thereon semi-annually, and redeemable in not less than ten, nor more than thirty years from the day on which said award shall be signed, and the said water works delivered over to the said corporation of New Orleans.

SEC. 43. *Be it further enacted, etc.*, That in case the mayor, aldermen and inhabitants of New Orleans shall deem it unadvisable or inexpedient to purchase the said water works from the Commercial Bank of New Orleans, as provided for in sections four and forty-two, and so notify the Commercial Bank of New Orleans thereof, at any time within eighteen months

thereafter, the bonds given by the mayor, aldermen and inhabitants of New Orleans, for the amount of stock owned by the corporation of New Orleans, shall be renewed by the Commercial Bank of New Orleans for twenty-five years, on the same terms and conditions as provided for in sections twenty-one and forty-one of this act; *provided, however*, the amount formed by the sinking fund herein provided shall be applied to the payment of said bonds, as far as it will go, and the bonds only renewed for such balance as may not be made up by the sinking fund aforesaid.

SEC. 44. *Be it further enacted, etc.*, That the corporation of New Orleans shall and may continue to make use of the water works now owned by the said corporation for supplying the city with water, until the Commercial Bank of New Orleans shall be so far advanced with the works contemplated by this act as will enable them to furnish water in such parts of the city as are now supplied by the works at present in operation, or until, by the progress of the water works so to be constructed, it may become necessary to remove the pipes at present in use, should such removal be found necessary.

SEC. 45. *Be it further enacted, etc.*, That the said company, in constructing the water works aforesaid, shall purchase from the mayor, aldermen and inhabitants of New Orleans the pipes already laid down by said corporation, at such price as may be agreed upon by seven arbitrators, of whom the superintendent of the works proposed to be constructed shall be one, and three to be chosen by the president and directors of the Commercial Bank of New Orleans and three by the city council of New Orleans, whose award as to the *value* of said pipes, for the use of said company, shall be final.

SEC. 46. *Be it further enacted, etc.*, That it shall be the duty of the said bank to sell to the best advantage the bonds received of the mayor, aldermen and inhabitants of the city of New Orleans for their subscriptions and to contract for the payment

of the interest thereof, at such place or places as the president and directors may deem expedient. *Provided*, that any additional charge, loss or exchange, or other expenses, consequent upon the sale of the bonds, or payment of such interest in any other place than New Orleans, shall be wholly defrayed by the bank.

SEC. 47. *Be it further enacted, etc.*, That during the first term of thirty days in which the subscription books shall remain open, as provided for in section first, no person shall be allowed to subscribe who is not a citizen of the United States and a resident of this state, of which facts the commissioners shall be the sole judges; and that all subscriptions shall be made in person, or under a notarial power, executed by not more than three persons. *Provided, however*, this section shall not be so construed as to prevent subscriptions, after the first term of thirty days, either in person or by proxy, should the books be re-opened. And that no individual, commercial firm or corporation shall be allowed a greater number of votes than one hundred, for the election of directors of said bank, either by proxy or otherwise, in his, her or their name.

SEC. 48. *And be it further enacted, etc.*, That the president and directors of the Commercial Bank of New Orleans may, at such time as they may deem it expedient, establish agencies at such places as they may think proper, for the purchase of bills of exchange and sale of bank checks; and may appoint such officers as they may think proper for the administration of the same.

(Signed) ALCEE LABRANCHE,
Speaker of the House of Representatives.

(Signed) C. DERBIGNY,
President of the Senate.

Approved April 1, 1833.

No 68.

Office Supreme Court U. S.
FILED,
OCT 20 1891
JAMES H. McKENNEY
CLERK

UNITED STATES SUPREME COURT.

THE NEW ORLEANS WATERWORKS CO.,
APPELLANT,

versus

THE MAGINNIS OIL AND SOAP WORKS,
APPELLEE.

THOS. L. BAYNE,
GEORGE DENEGRE,
C. W. HORNER,
For Appellee.

L. GRAHAM & SON, 99, 101, 103 GRAVIER ST., N. O.

UNITED STATES SUPREME COURT.

THE NEW ORLEANS WATER WORKS CO.,

APPELLANT.

versus

THE MAGINNIS OIL AND SOAP WORKS,

APPELLEE.

STATEMENT AND PLEADINGS.

The New Orleans Waterworks Company, claiming to have the exclusive right of drawing water from the Mississippi river, through pipes and conduits laid in the streets, for the purpose of supplying the City of New Orleans and its inhabitants with water, brought this suit in the Circuit Court to enjoin the Maginnis Oil and Soap Works from drawing water for its own personal use through a pipe laid from its works to the Mississippi river, by authority of the mayor and council of the City of New Orleans, its object being to compel the Soap Works to buy from it, and pay a heavy annual tax for the use of water.

The case was tried before the Circuit Judge and District Judge sitting together, and they being divided in opinion, judgment was entered in favor of the Soap Works and against the Water Works Company, in accordance with the opinion of the Circuit Judge. The Judges certified the questions upon which they differed, and the certificate of division is found in the transcript at page 240.

The complainant alleges, in its bill, that in 1833 an Act was passed by the Legislature of the State of Louisiana establishing a corporation called the Commercial Bank of New Orleans. The title of the Act is: "To incorporate the Commercial Bank of New Orleans." In the body of the Act it was declared that its "chief object is to be the conveying of water from the river into the City of New Orleans, and its faubourgs, into the houses of its inhabitants." (Copy of Act, p. 146).

On the 19th of January, 1869, the Commercial Bank transferred to the City of New Orleans the waterworks which had been established by the said bank. (Copy of Transfer, p. 155 *et seq*).

On the 9th of April, 1878, the City of New Orleans sold the waterworks to the New Orleans Waterworks Company, a corporation which had been established in that year. (Copy of Act of Sale, p. 163).

On the 7th of July, 1884, an Act was passed by the Legislature to "provide for the supply of water to the City of New Orleans by the New Orleans Waterworks Company, in case of the municipal taxation of said company; to authorize provision to be made for the payment of water supplied and to be supplied; to provide for obtaining a supply of clear or filtered water by the New Orleans Waterworks Company, and to enable the City of New Orleans to contract for the same; to regulate the payment of taxes imposed on said company contrary to the exemption given in its charter and to put into effect Section 11 of Act No. 33 of Acts of 1877, E. S., in instances of refusing or contrary to the exemption therein." (Copy of Act, p. 153.)

Complainant alleges that under these several acts, it has acquired the exclusive right to convey water into the City of New Orleans and into the houses of its inhabitants, that the price which it "would have earned and

should receive from the water pumped or carried from the Mississippi river to said premises, since the date said when said pipe was laid down, and put in operation by said defendant, far exceeds $2000, and that if said pipe is permitted to remain and be used by the defendant for the supply of said premises with water without remuneration or consent of your orator the loss of profit and damage will amount to a further sum largely in excess of the amount stated (p. 17, Sec. 28 of Bill), and asks that defendant be restrained from drawing water for its own use through a pipe placed under the street by permission of the government of the City of New Orleans, under the allegation that the flow of water thus drawn exceeds $2000.

That defendant is carrying on an oil and soap works at the corner of Tchoupitoulas and Julia streets in the City of New Orleans, uses a large quantity of water, has a large plant, and will continue in operation and to use water during the period of its existence. That said Maginnis Oil and Soap Works in 1883 secured from the City Council permission to lay a pipe to the Mississippi river through the public streets; thatthe same has been completed and has been put in use, and has been drawing water therefrom, in violation of the rights of the Water Works Company and the terms and conditions of its charter.

That the City of New Orleans was wholly without authority to grant any such license or privilege to the Maginnis Oil and Soap Works, the property of said works not being contiguous to or extending to the Mississippi river.

That the City of New Orleans and the defendant pretend the permission granted by the City and the right to use the pipe are based by the City and the defendant company on the provisions contained in the Constitution of 1879, and particularly on the 258th article, which abolishes all monopoly pivileges.

The complaint is made of bad faith in the City in exacting taxes contrary to an exemption contained in the act of 1877, and the history of that contention is set out in full in the bill. The bill sets forth that the Legislature of Louisiana passed Act No. 56, of 1884, providing for certain supply of water to the City of New Orleans; that this act conferred no privileges or rights on the Waterworks Company which it did not have before, but that the defendant, the Maginnis Oil and Soap Works and others, seized upon the act, and on the contract made between the Waterworks and the City of New Orleans, predicated on said act, as an excuse for wronging and injuring the Waterworks, pretending that the Waterworks Company had no right to the exclusive privileges granted in its charter by reason of Article 258 of the Constitution of 1879, and other articles of the Constitution, including Article 234, claiming that the company, by accepting the Act of 1884, had, under Article 234 of the Constitution of 1879, submitted to that Constitution, together with the authority of the 258th Article, which abolished all monopoly features of its charter. Article 234 is as follows:

Article 234 of the Constitution reads: "The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, nor renew, alter, or amend the same, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of the Constitution."

Article 235 reads: "The exercise of the police power of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State."

The bill prays for a discovery of the amount of water used by the defendant, for an injunction, and that the

defendant company, be compelled to pay complainant such remuneration for its supply of water as shall be found to be the schedule established rate of remuneration due the Water Works Company.

The answer admits the charter of the Commercial Bank of New Orleans, the purchase of its rights by the City of New Orleans, the sale of the property acquired by the City to the complainant; avers that the oil and soap works which defendant operates is contiguous to the river, and that it has the right to draw water from the river for its own use as a general right accruing to all citizens, and as being contiguous to the river under the exceptions specified in the Acts of the Legislature under which complainant claims.

Respondent admits that the City of New Orleans gave it the right, and required of it the duty to connect its factory with the Mississippi river, to discharge its waters into said river by one set of pipes, and acquire fresh water from the river for the use of its factory by another set of pipes, and that this is in accordance with the law and the police ordinances of said city.

Respondent further denies that after the adoption of the Constitution of 1879, the City did any act, or granted any right to any of its inhabitants conflicting with any rights or privileges acquired by the complainant from the State of Louisiana; denies that its premises are not contiguous to the river, and denies that the ordinances of the City granting permission to defendant to draw water from the river, or drain into it violate any of complainant's chartered right.

The answer further denies that defendant's rights depend upon the Constitution of Louisiana of 1879, or any ordinance infringing complainant's rights and denies the jurisdiction of the Circuit Court, complainant and defendant being both citizens of Louisiana.

The answer further denies that there is any equity in the bill; alleges that in 1882 the complainant demanded of respondent an increase of price for the use of water, from $300 to $500 per year; that respondent, though of ample means, refused to pay, and offered to submit the question to the courts; that this was agreed to, and the Water Works Company brought suit in the state court, but after issue joined refused to try the case, which is still pending, and threatened to cut its pipes and deprive respondent of its water supply, unless respondent complied with its exactions. This threat was carried out, and respondent was forced to apply to the city to lay a pipe to obtain water for its use, which it now obtains at a cost of not more than $25 per annum; that in pursuance of their purpose to harass and annoy respondent, complainant, the water works company, filed another suit in the state court, this time claiming $10,000 instead of $500, and this second action is also pending. That, notwithstanding these facts, the complainant water works company now brings this action, claiming $2000 and praying for an injunction.

A general replication was filed, testimony taken, the cause heard before Circuit Judge Pardee and District Judge Billings, who divided in opinion, and a decree was entered for respondent in accordance with the opinion of the Circuit Judge.

The certificate of division is as follows:

"This cause came on for final hearing on bill, answer, and replication, and proofs at this April term of this Court, A. D., 1888, the Circuit Judge and the District Judge both sitting and holding said Court and participating in said trial, and was submitted and taken under advisement by said judges. In considering what decree should or ought to be rendered herein the said judges differed and were opposed in opinion upon the following matter and questions:

"1. Whether under the Constitution and Laws of the State of Louisiana the Legislature had power to grant to a corporation the exclusive right to lay pipes and mains in the streets of the City of New Orleans for the purpose of bringing water from the Mississippi river either for sale or for individual use.

"2. Whether in the Acts of the Legislature of the State of Louisiana constituting the charter of the complainant corporation Act No. 33 of the extra session of 1877, and the Act amendatory thereof approved February 26, 1878, being Act No. 43 of the Sessions of Laws of 1878, the Legislature exercised such right and did grant the complainant corporation such exclusive right not only against all citizens, but also against the City of New Orleans in so far as relates to its control over the streets and public ways and places in said City.

"3. Whether the phrase 'any person or persons contiguous to the river' contained in the 18th Section of the said Act No. 33 of the extra session of the Legislature of 1877, granting to complainant corporate existence and rights, should not be construed to refer to and mean a person in possession, ownership, or occupation of soil of land that forms the bank of the river, with riparian rights in the owner, with the intervention of no other title, property, or public highway between his title and the river.

"4. The premises of the defendant are located as shown in the bill, and on the map or plan made a part of the proof in this cause. Is the license granted by the council of the City of New Orleans to the defendant, as shown by the ordinance made part of the proof in this case within the authority of said council under the complainant's charter and the laws of the State of Louisiana?

"And in deliberation concerning what decree ought to be rendered in this cause the said judge of the District

Court, the Hon. Edward C. Billings, sitting with the said Circuit Judge, the Hon. Don A. Pardee, were opposed in opinion as to and concerning how said questions should be answered and determined.

"The said judge of the District Court being of the opinion that the first, second and third of the said above set forth questions should be answered, and determined in the affirmative, and that the said forth question should be answered and determined in the negative; and that the decree in this cause should be made accordingly; but the said circuit judge was of the opinion that the said first, second and third questions should be answered and determined in the negative, and the said fourth question in the affirmative, and that there should be a decree accordingly and against the complainant; and the said circuit judge being of the opinion aforesaid, thereupon made order and final decree, herein dismissing the said complainant's bill of complaint, with costs, as appears by the record thereof; and in order that the truth and fact concerning such difference of opinion, and wherein said judges were opposed may appear of record, the said judges make this certificate thereof, and order the same to be filed in this cause as part of the record.

ARGUMENT.

It is respectfully submitted that the Circuit Court was without jurisdiction. The complainant and respondent being both citizens of the State of Louisiana, the Circuit Court could only have jurisdiction of the cause as one "arising under the Constitution and laws of the United States."

A reading of the bill, answer and certificate of division of opinion shows clearly that this case presents no question "arising under the Constitution and laws of the United States."

The bill, it is true, states that the action of the City of

New Orleans in passing the ordinance and of the defendant in acting thereunder are expressly based on Article 258 of the Constitution of Louisiana of 1879, which abolishes all monopolies, Article 234, which subjects to the operation of the Constitution all corporations which accept any subsequent legislation, and the Act of 1884, passed subsequently, and there is an affidavit made by an officer of the ~~court~~ Company seeking to give jurisdiction to the court of the appeal, p. 243.

But the answer denies that its rights are dependent upon any such claim, and leaves the appeal to rest entirely upon the certificate of division between the judges.

The certificate of division of opinion emphasizes the fact that there is no federal question involved. Four questions are certified, not one of which involves the Constitution of the United States, or any law thereof. The first question calls for a construction of the Constitution and laws of the State of Louisiana; the second question, the construction of the statutes of Louisiana creating the complainant corporation; the third question, one of fact, the meaning of the word contiguous; the fourth question, purely a question of fact, whether the premises of the defendant company are or are not contiguous to the river.

Unless the mere allegation by a complainant that there is controversy between himself and a defendant is sufficient to give the Circuit Court jurisdiction irrespective of whether or not such a controversy actually exists, the Circuit Court was without jurisdiction of this case.

It is clear that such is not the law, otherwise any and every case could be brought in the Circuit Court.

The case of *Robinson vs. Anderson, 121 U. S. 522* is decisive of this point.

In that case, the complainant alleged that the defendants claimed title to certain lands in controversy under a

grant of which the Circuit Court of the United States would have had jurisdiction, but this the answers denied. The defendants either disclaimed all interest in the land, or claimed title under and not adverse to that of the plaintiff.

The court say (p. 523):

"Upon the pleadings the court dismissed the suit, evidently for the reason that it did not really and substantially involve a dispute or controversy within the jurisdiction of that court. Such was the clear duty of the court under the Act of 1875, unless from the questions presented by the pleadings it distinctly appeared that some right, title, privilege or immunity on which the recovery depended would be defeated by one construction of the Constitution or some law or treaty of the United States, or sustained by an opposite construction. Starin vs. New York, 115 U. S. 248, 257."

"Even if the complaint, standing by itself, made out a case of jurisdiction, which we do not decide, it was taken away as soon as the answers were in, because if there was jurisdiction at all it was by reason of the averments in the complaint as to what the defences of the plaintiffs would be, and these as soon as the answers were filed and it ppear that such were not the defences cuit Court can not be required to keep jurisdiction of a suit simply because the averments in a complaint or declaration make a case arising under the Constitution, laws or treaties of the United States if, when the pleadings are all in, it appears that these averments are immaterial in the determination of the matter really in dispute between the parties, and especially if, as here, they were evidently made for the purpose of creating a case cognizable by the Circuit Court when none in fact existed."

"The provisions in Section 5 of the Act of 1875, requiring the Circuit Court to proceed no further, and dismiss the suit when it satisfactorily appears that, 'such suit does not really and substantially involve a dispute or controversy properly within' its jurisdiction, applies directly to this case as it stands on the pleadings. The answers show that the case made by the complaint was fictitious and not real. The defendants either disclaim all interest in the land, or claim title under and not adverse to that of the plaintiff."

In Shreveport vs. Cole, 129 U. S. 41, the complainant endeavored to interject a Federal question; the defendant denied that there was a Federal question involved and excepted to the jurisdiction. The court say, p. 41, "unless this suit was one, arising under the Constitution and laws of the United States the Circuit Court had no jurisdiction; and if it did not really and substantially involve a dispute or controversy as to the effect of construction of the Constitution or some law, upon the determination of which the recover depended, then it was not a suit so arising. Starin vs. New York, 115 U. S. 248, 257; Gold Washing and Water Co. vs. Keyes, 96 U. S. 199."

In the language of the Court in Robinson vs. Anderson, 121 U. S., p. 524, the allegations of the bill "were evidently made for the purpose of creating a case, cognizable by the Circuit Court, where none in fact existed."

In Shreveport vs. Cole, 129 U. S., p. 14, the Court said: "As remarked in Bernards Township vs. Stebbins, 109 U. S. 341, 353, it has been the constant effort of Congress and of this Court to prevent the discrimination in respect to suits between citizens of the same State and suits between citizens of different States, established by the Constitution and laws of the United States 'from being evaded by bringing into Federal Courts controversies between citizens of the same.'"

As said by Circuit Judge Pardee (Record p. 248): "In the cases under consideration, the parties complainant and defendant are corporations deriving life entirely from the laws of Louisiana, and these causes are apparently brought in this court as arising under the Constitution of the United States, when the real question in issue is not Federal, but arising solely in relation to the proper construction to be given to Louisiana laws, and where, if it is not the sole object, the main purpose is to escape the construction given by the Supreme Court of Louisiana to the laws of the State."

As far back as December, 1883, the Supreme Court of Louisiana in the case of the same complainant, the New Orleans Water Works Company vs. the Louisiana Sugar Refining Company, had construed the charter of the complainant company, Act 33 of 1877, and laws amendatory thereto, and held that the exclusive privilege granted to complainant by that charter to the complainant waterworks company was the exclusive privilege of "selling and vending water," and that draining water through pipes and conduits from the Mississippi river for one's own use was not forbidden by the charter and no infringement thereof. This case is reported in 35 Louisiana Annual, p. 111, and was brought to this court by writ of error from the Supreme Court of Louisiana, and was dismissed for want of jurisdiction as not involving a federal question.

New Orleans Water Works Co. vs. Louisiana Sugar Refining Co., 125 U. S. 18.

The Supreme Court of Louisiana in describing the act of the legislature under which complainant claims, says:

"The right conferred by the Legislature in 1833, and confirmed in 1877, was not to draw water from the river, nor was it to lay pipes and conduits on the lands and streets of the City of New Orleans. It was the *exclusive*

privilege of supplying the City and its inhabitants with water drawn from the river by those means, the object in view being, on account of benefits derived by the City, the *exclusion* of all others, corporations and individuals, from making a similar supply, in other words, from selling and vending water.

"The Commercial Bank in common with all the inhabitants of the City, possessed, independent of any legislative grant or concession the right to draw water from the river for its own purposes, and to supply the City and its inhabitants with it; but it did not, any more than any of the inhabitants of the City, have the right of laying the pipes and conduits necessary to convey the water through or over any of the lands or streets of the City, and to do so, it required special authority, either directly from the State, or from its functionary, the city herself. The right which it did not possess and which no other inhabitant possessed, was the exclusive privilege of supplying the City and its inhabitants forever, or a limited time, by means of pipes and conduits laid through the public soil.

"The moment that privilege was conferred by the State on the corporation, to supply the City and its inhabitants with water from the river, through pipes and conduits which it was authorized to lay through and over any of the lands or streets of the City, all preëxisting, as well as all subsequently arising rights, which could have otherwise been exercised, ceased to be available, and competition for such supply became an absolute legal impossibility.

"The rights to that exclusive privilege, under the present Constitution, is contested by the defendant; but it is entirely out of place to consider whether it exists or not, as, under the pleadings and the facts, the question of competition is not at all at issue.

"The City of New Orleans does not claim to have conferred on the defendant company, and that company does

not claim to have received from the City, the right or privilege of supplying the City and its inhabitants with water by means of pipes, conduits and hydrants.

"The City and the defendant company claims only, that the former had a right to grant, and the latter has that to enjoy, the permission of laying pipes and conduits from the river to its factory, for the sole purpose of supplying itself with water for its own purposes, and for no other.

"It can not be doubted for an instant that, as the City has, under general laws and by her charter, which emanates directly from the sovereign, the exclusive control of her public lands, quays, streets and avenues, she had the right of permitting the defendant company to lay pipes and conduits across the quay, and through the streets, from the river to within its factory limits, for the purpose of supplying itself with the water needed for its objects. R. C. C. 450, 453, 455, 457; 14 An. 854; 32 An. 915.

"It is true that Section 18 of the Charter of 1877 expressly protects riparian or contiguous properties against a possible effect of the *exclusive* privilege granted; but the provision there found is not to be construed as one conferring a privilege or right which otherwise would have had no existence. It is indisputable, that such riparian or contiguous owners would, independent of the declarations of Section 18, have enjoyed the right, which could, under no contingency, have thus been abridged.

"They had, clearly, not only the privilege, in common with all others, to draw the running water from the river for domestic purposes, *ad lavandum et potendum*, but also, on principle, that, without the need of a previous permission, of laying pipes from the river to their premises, to draw the water necessary for their use. The State and her functionaries—political corporations—however, have the right, in the exercise of the police power,

of regulating the enjoyment of that right, denying or permitting it, according as public security and good may or may not demand.

"If Section 18 was designed for any practical object, it could only have been to secure the contiguous owners, beyond the possibilities of a doubt, their indisputable rights, subjecting them, however, to the control of the municipal authorities, as the improvident or careless exercise of such rights, across the river bank and through the public street of a populous metropolis, might be attended with great calamitous consequences, inflicting incalculable wrong and injury."

Considering this decision of the Supreme Court of Louisiana, this court determined that no federal question was involved; it said, 125 U. S. p. 32: "The permission granted to the defendant company, though put in the form of an ordinance, was in effect but a license, and not a by-law of the city, still less a law of the State. If that license was vested in the City Council by the law of Louisiana, it was valid; it transcended that authority, it was illegal and void. But the question whether it was lawful or unlawful, depended wholly on the law of the State and not at all on any provision of the Constitution or laws of the United States."

Again, p 39: "In the present case, the Supreme Court of Louisiana did not, and the plaintiff in error does not pretend that it did give any effect to the provision of the Constitution of 1879 abolishing monopolies. Its judgment was based wholly upon the general law of the State, and upon the construction and effect of the charter from the legislature to the plaintiff company, and of the license from the City Council to the defendant company, and in no degree upon the Constitution or any law of the State subsequent to the plaintiff's charter. The case can not be distinguished from the cases above cited in which

writs of error to State courts have been dismissed for want jurisdiction. As was said in Bank of West Tennesssee v. Citizens' Bank of Louisiana, above cited, 'The result in this case would have been necessarily the same if the Constitution had not contained the provision in question.'"

The decision of this court in the above case would seem to be decisive of the present controversy. A federal question is just as necessrry to the jurisdiction of the Circuit Court in this case as it was necessary to the appellate jurisdiction of this court in the Sugar Refining case.

If no federal question was involved in that case because the Supreme Court of Louisiana based its declsion upon a proper construction of a State statute (defendant's charter), and not upon any federal question, then no federal question is involved in this case where defendant bases its right upon the general laws of the State and the proper construction of complainant's charter, and where the decision of the circuit judge is in favor of defendant on the same ground, and shows that no federal question was involved.

Complainant appears to rely entirely upon the Rivers case, 115 U. S. 674. That case has nothing whatever to do with the present case. In that case the bill set up a Federal question, and the defendants demurred to the bill, admitting all of its allegations, so that the jurisdiction of the circuit court was not contested. Nor has the case of the St. Tammany Water Works Company vs. New Orleans Water Works Company, 130 U. S. 64, any bearing upon this case, for the same reason.

As said by your Honor in the case of the Sugar Company, 125 U. S., p. 32: "The case of the New Orleans Water Works Company vs. Rivers, 115 U. S., 674, and the St. Tammany Water Works Company vs. New Or-

leans Water Works Company, 120 U. S., 64, on which plaintiff relied in support of its bill, were essentially different from the case at bar. In each of these cases, the validity of the Constitution of 1879 abolishing monopolies was drawn in question by the bill and relied on by defendants."

PARDEE, Circuit Judge delivered in this case a careful and well considered opinion in which he says:

"Assuming that the question arising under the Constitution, upon which our jurisdiction rests, are to be decided in favor of the complainant; there remains the question of construction of complainant's charter and the general laws of Louisiana with reference to the right of the City of New Orleans, through its Council, to grant licenses or permits to the defendants to lay pipes in and across the public streets to their respective establishments for the sole purpose of supplying themselves respectively with water from the Mississippi river.

"In the case of New Orleans Water Works vs. Louisiana Sugar Refining Company and the City of New Orleans, 35 An. 1111, this question of the authority of the City of New Orleans under the complainant's charter and the laws of the State was presented to the Supreme Court of the State of Louisiana and was decreed in favor of the right.

"It is true that in the case of the refining company, among other defenses to the suit set up that it was a contiguous person to the Mississippi river, and therefore within the letter of the proviso in the 18th section of complainant's charter, but the court wholly ignored the contiguity defence, and based its judgment wholly upon the general law of the State and upon the construction and effects of the charter from the Legislature to the Waterworks Company, and of the license from the City Council to the Refining Company, and in no degree upon the Con-

stitution or any law of the State subsequent to the Waterworks charter.

"The case was carried by writ of error to the Supreme Court of the United States, and there dismissed for want of jurisdiction, the court deciding that no Federal question was involved, the right of the City of New Orleans to grant the license complained of being wholly a question to be decided under the law of Louisiana.

"See Sup. Ct. Rep., vol. 8, No. 22, p. 741. (125 U. S. p. 18).

"The decision of the Supreme Court of the State was rendered in 1884.

"In 1885 the precise question was before the Supreme Court of the United States, in the case of the New Orleans Waterworks vs. Rivers, and was then decided in favor of the Waterworks Company, the court holding that an exclusive franchise granted to supply water to the inhabitants of a municipality by means of pipes and mains laid through the public streets is violated by a grant to an individual in the municipality of the right to supply his premises with water by means of pipes so laid.

"Although the case of the Waterworks Company vs. Refining Company was then pending on writ of error, and the counsel for the Refining Company submitted a brief in the River's case, in the decision no reference whatever is made to the Supreme Court of Louisiana upon this very question, conceded to be not a Federal question, but one wholly depending upon local Louisiana law.

See Waterworks Company vs. Rivers, 115 U. S., 674.

"The question is thus squarely presented whether, in a matter involving solely Louisiana law, where no property rights under former decisions are involved, this court should follow the decision of the highest court of the State or the decision of the Supreme Court of the United States.

"The same question was presented to the Supreme Court of the United States in the case of Fairfield vs. County of Gallatin, 100 U. S., p. 47.

"In 1874, in the case of Railroad Company vs. Pinkney, 74 Ill., 277, the Supreme Court of the State of Illinois gave a certain construction to a provision to the Constitution of the State. About one year afterwards, in Town of Concord vs. Portsmouth, 92 U. S., 625, the same constitutional provision came before the Supreme Court of the United States, and received a contrary construction, the case of Railroad vs. Pinkey not being called to the attention of the court.

"In Fairfield vs. County of Gallatin, *supra*, the same question was again brought before the Supreme Court of the United States, the defendant in error relying upon and the court below having followed Concord vs. Portsmouth, *supra*, and it was then held, reversing the Circuit Court and citing Polk's Lessee vs. Wendall, 9 Cranch, 87; Nesmith vs. Sheldon, 7 How. 812; Walker vs. State Harbor Commissioners, 17 Wall. 648; Elmendorf vs. Taylor, 10 Wheat., 152; Green vs. Neal's Lessee, 6 Pet. 291; Leffingwell vs. Warren, 2 Black, 599; Sumner vs. Hicks, 2d, 532; Olcott vs. Supervisors, 16 Wall. 678. and State Railroad Tax Cases, 92 U. S., 575, that it is the general rule of decision to follow and adopt the decisions of the State Courts in the construction of their own Constitution and Statutes, when that construction has been settled by the decisions of its highest tribunal, and that this rule of decision is to be followed even where the Supreme Court of the United States has given a different construction of the State law, provided no rights are affected which have been acquired under their former decisions."

See also Suydam vs. Williamson, 24 How., 427.

"To the above general rule there are exceptions—*i. e.*,

where rights of property have been acquired under former decisions of either the State or Federal courts, where on the same transactions the Federal court has first passed, and the decisions of the State court relied upon do not meet the independent judgment of the Supreme Court of the United States, and when general questions of commercial law are involved.

See Pease vs. Peck, 18 Howard, 595.
Morgan vs. Cutenius, 20 Howard, 1.
Thompson vs. Perrine, 103 U. S., 806.
Douglass vs. County of Pike, 101 U. S. 677.
Oates vs. National Bank, 100 U. S. 239.
Burgess vs. Seligman, 107 U. S. 20.

"In Pease vs. Peck, and in the last cited case, it is intimated that the general rule should lose some of its rigidity in cases involving controversies between citizens of different States.

"In the cases now under consideration the parties complainant and defendant are corporations deriving life entirely from the laws of Louisiana, and these causes are apparently brought in this court as arising under the Constitution of the United States, when the real question in issue is one not federal, but arising solely in relation to the proper construction to be given to Louisiana laws, and where, if it is not the sole object, the main purpose is to escape the construction given by the Supreme Court of Louisiana to the laws of the State.

"Heretofore, in these cases, on motions for injunctions *pendente lite*, where the main question argued was whether the complainant's monopoly had been extinguished by the fact that the complainant had procured and accepted remedial legislation under the present Constitution of the State (see Con. 1879, Arts. 234 and 258), and considering that under the charter to complainant the City was limited in granting permits to persons actually

contiguous to the river, and that such contiguity was a question for the court to determine, we have followed the River's case and granted temporary injunctions in those cases where more than public ground separated the parties from the river.

"But now, it seems that in the courts the question of contiguity cuts no particular figure, but is decided by the City Council when they grant or refuse a permit. In the Rivers case, as interpreted by the Supreme Court in Water Works Co. vs. Refining Co., *supra*, it was not in issue, and in the Supreme Court of the State the defence of contiguity was wholly ignored.

"It can easily be inferred from a close examination of the Rivers case, that the only questions there intended to be decided were whether the monopoly granted complainant in its charter was abrogated by the State Constitution, and whether the City of New Orleans could make the grant to Rivers by reason of such abrogation, and that the question whether under a fair coustruction of complainant's charter and the general laws of the State, the City had the right to grant a license to a citizen to lay pipes to the river to supply himself with water for his private needs was not at all considered.

"In a matter so important to the public, and where the action of the City Council of New Orleans can not be restrained, uniformity in the jurisprudence which determines the value of the permits or licenses granted, is very desirable, and the rights of the party who received a license should not wholly depend upon the selection made by the Waterworks Company, of the court (State or Federal) to hear the cause.

"This desirable uniformity is better attained by following the long line of decisions of the Supreme Court of the United States, declaring that the Federal courts should adopt and follow the decisions of the highest court of the

State in the construction of its own Constitution and Statutes, than in following one decision of the Supreme Court on what is now conceded not to be a federal question.

"As these cases are now presented to the court, and upon final hearing, I am of the opinion that decrees should go for the defendants."

The Circuit Judge holds that in the construction of the Statute (under which complainant claims) by the Supreme Court of the State, should be accepted by the Federal courts as the construction upon which they would act, and cites the authorities fom this court upon which he bases his judgment. The State court shows in its opinion that no Federal question is involved in the construction of the charter and laws of the State. Defendant is not charged charged with selling water, or of entertng into competition winth complainant. We could add other citations, presenting other illustrations and leading to the same conclusion as thosecited by the Circui tJudge.

Kain vs. Gibbony, 101 U. S. 362.

Boyd vs. Alabama, 94 U. S. 649.

Claiborne County vs. Brooks, 111 U. S. 400.

The claim made by complainant is to be strictly construed against it. Not merely popular sentiment rebels against any such claim, but the courts, from the days of Portia to the present time are averse to the maintenance of such claims except when they come within the strict letter of the law.

"The rule of construction in this class of cases is that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded, but what is given in unmistakable terms, or by an implication equally clear. The affir-

mative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court."

Fertilizing Company vs. Hyde Park, 97 U. S. 666.

Mayo vs. Commissioner Spring Garden, 7 Bar. 363.

Complainant contends (brief, p. 14), that under proper rules of construction, a proviso in a statute, such as that found in the 18th Section of complainant's charter, viz: "That nothing in this Act shall be so construed as to prevent the City Council from granting to every person or persons contiguous to the river the privilege of laying pipes to the river exclusively for his or their own use," is to be construed strictly in favor of the largest grant with the least limitation consistent with the language of the proviso or limiting clause, and thereby limits the signification of the words to riparian proprietors, and that riparian rights are limited to those actually upon the banks of the river. We think, on the contrary, that the proper rule of construction to be applied in this case is that heretofore referred to in the case of Fertilizing Company vs. Hyde Park, 97 U. S., 66.

The exclusion of citizens from the rights of drains or using water from the river which is declared to be a common right open to all (C. C. 450), is in derogation of this common right. "It is a principle universally recognized that laws in derogation of common right, are to be strictly construed, and can not be extended beyond their clear and precise import, so as to reach persons, cases or things, other than those they legally and specifically embrace."

Succession of Erwin, 33 Louisiana An. Rep. 68.

Herbert vs. Bendon, 2 An. 771.

The testimony shows that the property used by defendant was part of the batture of the City of New Orleans, and upon the bank of the Mississippi river.

Major Andrew Hero says (p. 41), "the property on Julia street, bounded by Tchoupitoulas, Julia, Peters (late New Levee) and St. Joseph streets, on which has been erected the Maginnis Oil and Soap Works, is part of the batture of the City of New Orleans.

"That the same was acquired and owned at the time the rights claimed herein by the New Orleans Waterworks Company for years, in the year 1833 as batture property, the front thereof being the Mississippi river at high water.

"That the right of the alluvian was retained by the vendors of said property at said date.

"That the same was open, public and contiguous to the river, without any private property intervening between the front thereof and the river, until the year 1852, when, by reason of transfers and rights acquired by the City of New Orleans, sufficient batture having formed in front of the property now known as the Maginnis Oil and Soap Works, same was disposed of by said City of New Orleans and then and there became private property, but did not deprive the said Maginnis Oil and Soap Works of its proximity to said river as contiguous thereto."

Act of sale of February 12th, 1834, p. 43.

The banks of the river in this part of the City are constantly changing and extending into the river by accretion of batture. This is illustrated in the map found in 4 Wallace Rep. 503, Santel vs. Shephard. Thus the levee which was the bank of the river when the Commercial Bank was chartered, is constantly enlarging, and property which formed part of the batture and bank of the river when the charter was granted, may now be three or four blocks distant, by this formation of batture in front of its property, and complainant contends that such property becomes thereby excluded from the use of water from the river. It seems to us that this is an element entering into the consideration of contiguity which is especially pleaded by

defendant in its answer, and involves a question of fact determined in its favor by the circuit judge. The testimony of Major Hero and other evidence adduced, shows that the property on which has been erected the Maginnis Oil and Soap Works, is part of the batture of the City of New Orleans: "that when the water works were chartered the front was at the Mississippi river at high water, that the same was open, public and contiguous to the river." The judgment was rendered upon this and other testimony, and established a fact which entered into the determination of the case and this was the express issue made in defendant's answer.

1. The pleadings show that complainant and defendant are citizens of the State of Louisiana. They are both corporations created by its laws, and have their domicile in New Orleans.

2. The amount of value in dispute is alleged in the bill merely to exceed $2000, and there is no jurisdiction in this court unless it results from the certificate of division of opinion between the judges of the Circuit and District Courts. An affidavit is filed attempting to show that complainant would charge more than $5000 for the use of a pipe to the river it would exceed $5000, and that the amount involved exceeds that sum.

The certificate of division embraces questions of fact or mixed law and fact; and as jurisdiction depends entirely upon this certificate, it is not such as to require this court to consider the appeal, and it must be dismissed. "The points certified must be questions of law only, and not questions of fact." In the case of Jewell vs. Knight, 123 U. S. 426, all of the authorities are cited, and we may refer to Waterville vs. Van Slyke, 116 U. S. 699; Wylie vs. Northampton Bank, 119 U. S. 360; California Paving Co. vs. Molitor as particularly applicable to this case.

U. S. Statues at Large, Fire Insurance Association vs. Wickham, 128 U. S. 434, p. 159.

Many cases went to the Supreme Court of the United States under this statute. It was held that the whole case could not be sent up, but only points of law could be certified—only such points as arose during the trial of the case prior to final judgment.

In the course of time, it was found that such a method of procedure was fraught with great delay and prolonged the trial of cases. Therefore, on June 1, 1872, was passed an act entitled "An Act to further the administration of justice.' 17 Statutes at Large, p. 196.

Section 1 of this Act provides as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, in any suit or proceeding in a Circuit Court of the United States, being held by a Justice of the Supreme Court and the Circuit Judge or a District Judge, or by the Circuit Judge and a District Judge, there shall occur any difference of opinion between the judges as to any matter or thing to be decided, ruled, or ordered by the court, the opinion of the presiding justice or presiding judge shall prevail, and be considered the opinion of the court for the time being: but when a final judgment, decree or order in such suit or proceeding shall be entered, if said judges shall certify, as it shall be their duty to do so if such be the fact that they differed in opinion as to any question which, under the Act of Congress of April 29, 1802, might have been reviewed by the Supreme Court on certificate of difference of opinion, then either party may remove said final jdugment, decree or order to the Supreme Court on writ of error or appeal, according to the nature of the case and subject to the provisions of law applicable to other writs of error or appeals in regard to bail and supersedeas."

The above statutes are found as Sections 650, 652 and 693 of the Revised Statutes of the United States.

In the case of Bartholow vs. Trustees, 105 U. S., p. 6, it was held that the Supreme Court of the United States could only review questions on the certificate of division of opinion where an appeal has been taken or a writ of error sued out, and that case was dismissed because no writ of error had been taken, as provided by the Act of 1872.

In the case of Dow vs, Johnson, 100 U. S., 158, decided in October, 1879, it was objected that the Supreme Court had no jurisdiction because the amount involved was only $2659.67 and costs, and was not sufficient to give the Supreme Court jurisdiction since the passage of the Act of February 16, 1875, which raised the appealable amount to $5000. But this Court held that the right of appeal existed in case of division of opinion whatever the amount involved. Three judges dissented on the ground that the right of appeal in a case of division of opinion was confined to cases involving more than $5000.

Now, either the Act of 1872 limits the province of a certificate of division of opinion solely to cases under $5000, or it limits the right of appeal in cases over $5000 to the question stated in the certificate and nothing else, for if a case involving more than $5000 can be taken up on appeal or a writ of error and re-examined as all other cases involving more than that amount with regard to any difference of opinion between two judges, there can be no utility of a certificate of division of opinion in such a case.

If, as all of the decisions seem to hold, the Supreme Court in a case of a certificate of division of opinion, can only review such law points as are certified, and can not take cognizance of questions of fact, or of mixed law and fact, then the decision should be affirmed and the appeal dismissed, because the question of contiguity is a question of fact. In truth, all four of the questions in-

volve questions of fact, or of mixed law and fact. Besides the questions certified tend to show the court that there was no federal question involved, and that the court below had no jurisdiction.

This whole subject of review of cases under division of opinion is discussed in Jewell vs. Knight, 123 U. S., 426, and Fire Insurance Association vs. Wickham, 128 to 434, and all authorities are cited.

But if it is possible to find any jurisdiction of this case in the federal courts by reason of the mere allegations of complainant, presenting an issue which we contend upon which the case does not depend, then we respectfully submit that issue should be decided adversely to him. These allegations are to the effect (p. 15 and 16) that the City of New Orleans claims that by reason of Act No. 56 of 1884, passed (since the decision in the River's case) for the benefit of the Water Works Company—after the adoption of the Constitution of 1879, complainants have lost the monopoly rights originally granted under their charter and subordinated the same to said Constitution under Article 234.

Act No. 56 of 1884 was a special statute as recognized by the necessity for the advertisement recited in Article 48 of the Constitution. "No local or special laws shall be passed on any subject not enumerated in Article 46 of this Constitution unless notice of the intention to apply therefor shall have been published, without cost to the State, in the locality where the matter or thing may be situated, which notice shall state the substance of the contemplated law and shall be published at least thirty days prior to the introduction into the General Assembly of such bill and in the same manner provided by law for the advertisement of judicial sales. The evidence of such notice having been published shall be exhibited in the General As-

sembly before such Act shall be passed and every such Act shall contain a recital that such notice has been given. The advertisement is recited in the Act, p. 153. It was argued by the Water Works Company complainant, and is offered in evidence, Exhibit J, p. 239. Thus the complainant procurred the passage of this in the mode pointed out by the Constitution, and subordinate to its provisions, and it may be assumed weighed its advantages as compared with the monopoly feature of its charter for every citizen is expected to know the fundamental law of the State and to know its Article 234 under which the acceptance of any beneficial legislation waived so much of its charter or was repugnant to another article of the same Constitution 258. Under Act No. 56 of 1884, complainant instituted for its taxes, an assessment against the City of New Orleans for all the water required for public use thus largely increasing its revenues. Thus it claims, and to-day enjoys the great benefit of this Act, the passage of which was secured for its benefit, and the valuable funds of which it is now enjoying, and from which it derives largely increased revenues. Mr. Houston, vice-president and largest stockholder show that the mere drawing of the Act and presentation of the same affected the market of the stock. Record p. 239; Houston p. 107; Gaines p. 119; water rates stated in bills and testimony thus enjoying the great advantages of this act of special legislation, it is bound by the waiver of its monopoly under Article 234 of the Constitution, under which the law was enacted. We allude to this in consequence of the persistent effort of complainant to bring forward this as the federal question which it has the right to present to this court and have determined in this case. Our contention is that this question is not in the case, unless it can be considered as raised by complainant of his own